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A MANUAL OF PROCEDURE

THE LAW OF CONDITIONAL SALES

CONTAINING

The Essential Features of the Laws Governing Conditional Sales in Every State of the United States; also Approved Forms for Conditional Contracts of Sale, Acknowledgments, etc., etc.

REVISED EDITION

By
FRED BENSON HARING
of the Buffalo Bar

Author of

"Corporate Interstate Commerce Business"

1918.

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PREFACE.

The original publication on this subject was brought out in August, 1907, and the Author's idea as to the manner in which this information should be presented for the whole United States seems to have been justified by the sale of such work. Shortly after the first books were put into use, inquiries were made as to how this publication would be kept up to date. There were so many firms desirous of being informed when changes took place, that a system was instituted by which close and constant attention has been given to new statutes and all court decisions upon the subject, both State and Federal. Anything of sufficient importance was published and issued as a supplement to the original book.

This additional matter is now of such volume as to justify a revision of the original book bringing it in at the proper place and thus to furnish a complete and up-to-date edition of "Haring's Conditional Sale Laws."

FRED BENSON HARING.

Buffalo, New York,
January, 1918.

FOREWORD.

The question as to what credit should be extended is perhaps the most important one connected with modern business transactions. It must necessarily be given by every business house whether large or small. The personal obligation of a buyer is often not sufficient to justify a delivery of goods to him which are to be paid for in the future, and some additional security must be obtained or the order be rejected. In such case title is sometimes passed and a chattel mortgage taken as security, but more often than otherwise the purchaser absolutely refuses to give such an instrument, on the ground that it is detrimental to his credit. To meet these conditions there has grown up the custom of retaining title in the goods sold until the purchase price is paid. Such an arrangement is known as a conditional sale and is one of the safest possible methods of securing payments due in the future.

When taking charge of the legal department for a large corporation doing much of its business under conditional contracts of sale, the author realized the necessity of knowing, even before the acceptance of an order, just what steps could and should be taken to preserve the vendor's title as against the vendee's misfortune or dishonesty. To meet this need he prepared a systematic statement of the law and procedure on conditional sales for every State in the Union. The results of his labors are embodied in the present volume.

Every business house employing conditional contracts of sale must of necessity have more or less of this information, but in most cases it is not complete for every state nor is it systematized or in form to be readily available. The author there-

fore believes that a comprehensive, and systematic statement such as he has endeavored to give in the present work will be found of value.

The arrangement of the volume is simple. A few general rules or axioms which govern such transactions are first presented. Following these is a statutory classification of the various states based on the similarity of their laws affecting conditional sales. Next is a condensed paragraph statement of the law of conditional sales for every state and territory of the Union, with alphabetical arrangement of the states. Then comes the main body of the work. Here the states are again taken up in alphabetical order and the laws and requirements as to conditional sales are set forth under uniform headings and in detail. Citations are given and where the laws of any state make it necessary, the forms of acknowledgments, affidavits, etc., of that particular state are also included. In the latter part of the volume will be found a number of forms of contracts which may serve as precedents. These are approved forms which have stood the test of time.

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OUTLINE.

The outline given below is followed in the treatment of each state, except New York, the titles and their order being the same in every case as far as possible. (See New York, page 257).

1. Legal Status of Conditional Sale Contracts.
2. How Executed.
3. Acknowledgment or Proof.
4. Recording or Filing.
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CONDITIONAL SALES.

PART I.

INTRODUCTORY.

Conditional contracts of sale are valid as between the original parties thereto without recording or filing, in every state and territory.

Recording or filing a conditional contract of sale is only necessary to protect the vendor's or seller's title as against third parties, who otherwise might secure some right or interest in the property, without knowledge of the existing contract. Its effect is ordinarily to give legal notice to third parties of the real ownership of the property involved, thereby preventing buyers from disposing of property which does not belong to them, or preventing its sale under judicial process to pay these buyers' debts.

Conditional contracts of sale, if properly executed and recorded or filed as the law provides, are an absolute protection to the vendor or seller as against nearly all third parties until the goods are paid for. The only exceptions arise (a) where the vendee or buyer is engaged in the business of selling such articles, or using them in the course of manufacturing or in some other way, by which they must necessarily be consumed or destroyed or lose their identity, (b) in some instances where the articles become firmly attached to real property and cannot be removed without material damage to such articles or to such real property, (c) in the state of Illinois where conditional

contracts of sale are not recognized if the rights of third parties intervene even though such contracts be recorded or filed, (d) in the state of Pennsylvania where a lease or bailment contract with option to purchase is the proper form unless the property in question becomes firmly attached to real estate, (e) in the state of Louisiana where a lease with option to purchase should be used, (f) in some few states where the courts have held that the destruction of the property before full payment relieves vendee of further liability.

The distinction between recording and filing conditional contracts of sale should be observed. The object to be attained is the same—notice to third parties. A contract in order to be recorded, must be copied, word for word, into a book kept by the recording officer and the names of the parties must be indexed, for which service a charge is made according to the length of the contract. The filing of the same contract only requires that the paper or a copy thereof shall be placed in the keeping of the proper officer and that he shall index the names of the parties to such contract for ready reference. The fees for filing are only nominal, and do not depend upon the length of the contract. Very few contracts can be drawn briefly enough to keep the recording fee under $1.00, while a filing fee in most instances will not exceed 25 cents. Whether any particular contract should be recorded or filed, will usually be settled by the laws obtaining in the state in which the property to be protected is held after delivery to the vendee.

Many states only require that a contract of conditional sale shall be in writing and properly signed to be valid as to all parties. Others while requiring that the contract be recorded or filed to be valid provide that if a contract be in writing and properly signed, it may be recorded or filed without the necessity of securing the vendee's acknowledgment or having the instrument signed or proven by a subscribing witness. Still others require that the contract must be acknowledged by the vendee or vendor or be signed or proven by one or more subscribing witnesses in the same manner as a deed of real estate

before it can be recorded or filed. In some states the law is not settled as to what is necessary in the way of acknowledgment or proof before a contract of conditional sale can be recorded or filed. In others such a contract is not recognized in law when the rights of third parties intervene, even though the same be executed and recorded with the same formality as a deed of real estate. Renewal or refiling after a certain period is necessary in many instances, and some states require that a contract shall be discharged from record after payment, and assess a penalty on the vendor for a failure to discharge.

As has already been said, in some of the states where conditional contracts of sale must be filed or recorded in order to be valid as to third parties, formal verification of the instrument is a prerequisite. In a few states this verification must be in the form of an acknowledgment by the vendor and the instrument will not be received for filing or recording unless it is so acknowledged. In most of the states, however, where verification is required, the laws provide that the contract may be either acknowledged by the vendee or proven by a subscribing witness. If, then, the vendee objects to or refuses acknowledgment of the instrument, as is sometimes the case, recourse may be had to proof by a subscribing witness and the instrument so proven may be filed or recorded without the vendee's acknowledgment, and even without his knowledge that the instrument has been placed on record. Under these conditions, proof by a subscribing witness becomes at times a very important matter, and for this reason the method and requirements of such proof have been set forth in the text of the present volume with much particularity.

In the matter of the criminal liability of vendee for disposal of property—one of the subject headings of the present volume—it may be said that the status of property held under conditional contract of sale is peculiar. The title to such property remains in the vendor, but notwithstanding this, the vendee's first payment gives him an interest in the property and this interest increases with every payment made. In other

words, while the legal title remains in the vendor, the vendee, if any payments have been made, has an equity in the property, and for this reason if he should make way with the property it would not be held a crime under the usual penal statutes.

This is also true where property held under chattel mortgage is sold in defiance of the rights of the mortgagee. In many of the states the matter has been provided for by special laws which make the disposal of property held under chattel mortgage or conditional contract of sale a crime. All such laws as far as they apply to conditional sales have been specifically set forth in the present volume. Where special laws make the sale, removal, secreting or mortgaging of conditionally sold property a crime, these laws will of course act directly to deter the vendee from taking any such action with regard to the property. Or, if the property is disposed of notwithstanding these laws, they afford a means of bringing pressure to bear upon the vendee for the purpose of securing payment.

So far these laws are of direct advantage to the vendor. His best protection is, however, in all cases his lien upon the property itself, and for this reason the author has given special prominence in the present volume to the methods to be followed, and the formalities to be observed in securing to the vendor the strongest possible lien—a lien so far-reaching that even should such property be disposed of to an innocent purchaser for value it may be followed and recovered from the purchaser's hands.

When a vendee fails in payments required by a conditional contract of sale, the vendor, if unable to collect, will usually wish to repossess himself of the property. In some states this is not permissible, the laws providing that the property must be sold, the vendor looking to the proceeds of such sale for his relief. In other states the property may be taken possession of by prescribed methods. In many states, however, no specific provision is made for repossession when payments fail, nor are the respective rights and relations of the vendor and ven-

dee clearly defined. In these states it may be said that as a general rule upon default in the contract payments or upon the failure of the vendee to perform any other of the contract conditions, the vendor may, if he can, repossess himself of the property without legal process and with scant formality of any kind. If, however, the vendee opposes such an informal taking of the property, the vendor cannot forcibly assert his rights even though so specified in the contract, but must secure possession by legal action, usually by replevin of the property or a foreclosure of the lien.

In the digest of the laws of the various states as given in the present volume the method of repossession, or of procedure in event of the failure of contract payments, or of other contract conditions, is given in detail where prescribed by the statute law. In the states where such procedure is not given it will be understood that the laws are silent as to the method of repossession and that the vendor must, if an informal repossession of the property is resisted by the vendee, proceed by civil action.

In those states where no statute laws prescribe the rights of vendor and vendee, when property conditionally sold is to be repossessed by civil action, the courts have sought to do equity by allowing the vendee a repayment of the money already paid in, less a reasonable rental for the use of the property while in his possession with a fair allowance to the vendor for damages if the property has been broken or otherwise injured by the vendee to a greater extent than is consistent with ordinary wear and tear. To avoid this complication most contracts contain an express forfeiture clause by which all payments made by the vendee are to be retained by the vendor as rent for the use of the property in case of its repossession, but such provisions are of doubtful validity as being against public policy.

The status of conditionally sold property which has been attached to a building, is given in the present volume under the head of "Fixtures" as far as determined by statute law or

by court decisions. In some states, however, the matter is not covered by statute law and has not been established by court decisions. In these states it is impossible to predict with any certainty what the holdings of the courts will be should the matter come up, because of the irreconcilable divergences of existing decisions in the various states. This being true, it would be prudent for the vendor when drawing a contract of sale for any state in which this matter is not settled, to make specific provision for the status of the property if it is to be attached to a building. Such provision if agreed to by the vendee would undoubtedly be effective as between the parties to the agreement. It would also probably be sufficient as to third parties, if the contract of sale is duly filed or recorded.

PART II.

STATUTORY CLASSIFICATION OF STATES.

In the statutory classification of states which follows, the various states are grouped according to the similarity, as to essential features, of their laws governing conditional sales.

CLASS I.

States where conditional contracts of sale do not need to be recorded or filed, or acknowledged by any one, or be signed or proven by a subscribing witness to hold title.

ARKANSAS,	(Except for railroad equipment).
CALIFORNIA,	
DELAWARE,	(Except for railroad equipment).
	(Except landlord for rent).
DISTRICT OF COLUMBIA,	(Where contract is not more than $100.00).
	(Except landlord for rent).
IDAHO,	(Except for railroad equipment).
INDIANA,	(Except for railroad equipment).
LOUISIANA,	(Status doubtful. See Louisiana under "Digest of State Laws, Part III).
	(Except landlord for rent).
	(Except for railroad equipment).
MASSACHUSETTS,	(Except where property becomes a fixture on real estate).
	(Except for railroad equipment).
MICHIGAN,	(Except where property goes to a retailer for resale).
	(Except for railroad equipment).

(Class I—Continued.)

MISSISSIPPI,	(Not within three years, except as to landlord's lien and where vendee shall transact business as a trader or otherwise and fail to display a proper sign).
	(Except for railroad equipment).
NEVADA,	(Except for railroad equipment).
OREGON,	(Except where property becomes a fixture on real estate).
	(Except for railroad equipment).
RHODE ISLAND,	(Except for railroad equipment).
TENNESSEE,	(Except for fencing material).
	(Except for railroad equipment).
UTAH,	(Except for railroad equipment).

CLASS II.

States where conditional contracts of sale must be recorded or filed to hold title as against third parties, but need not be acknowledged by any one, or be signed or proven by a subscribing witness in order to be so recorded or filed.

ALABAMA,	
ARIZONA,	(Except for railroad equipment).
KANSAS,	(Except for railroad equipment).
MAINE,	(Except for railroad equipment).
MARYLAND,	(Except for railroad equipment).
MASSACHUSETTS,	(Where property becomes a fixture on real estate).
	(Except for railroad equipment).
MICHIGAN,	(Where property goes to a retailer for resale).
MINNESOTA,	(Except for railroad equipment).
MONTANA,	(Except for railroad equipment).
NEBRASKA,	(Affidavit of vendor must be attached).
	(Except for railroad equipment).

(Class II—Continued.)

NEW YORK,	(Except for railroad equipment).
OHIO,	(Affidavit of vendor must be attached).
OKLAHOMA,	(Except for railroad equipment).
PENNSYLVANIA,	(Where property becomes a fixture on real estate).
	(Except for railroad equipment).
TEXAS,	
VERMONT,	(Except for railroad equipment).
VIRGINIA,	(Must be signed by vendee and vendor).
	(Except for railroad equipment).
WASHINGTON,	(Must be signed by vendee and vendor).
	(Except for railroad equipment).
WEST VIRGINIA,	(Except for railroad equipment).
WISCONSIN,	(Must be signed by vendee and vendor).
WYOMING,	(Affidavit of vendor must be attached).
	(Except for railroad equipment).

CLASS III.

States where conditional contracts of sale must be recorded or filed to hold title as against third parties, and must be acknowledged by vendee, or be signed or proven by a subscribing witness in order to be recorded or filed.

GEORGIA,	(Contract must be acknowledged by vendee in person, or be proven by one subscribing witness to the vendee's signature).
KENTUCKY,	(Contract must be acknowledged by vendee, or must be signed by two

(Class III—Continued.)

	subscribing witnesses to vendee's signature, be proven by one and be recorded).
MISSISSIPPI,	(Contract need not be recorded within three years from its date except as to landlord's lien for rent, and where vendee shall transact business as a trader or otherwise and fail to display a proper sign).
	(Contract should be recorded and needs the acknowledgment of vendee, or proof of vendee's signature by one subscribing witness).
MISSOURI,	(Copy of contract may be filed and no acknowledgment or proof is required. If original sent for record must be acknowledged by vendee or be signed and proven by one subscribing witness to vendee's signature).
NEW JERSEY,	(Contract must be acknowledged by vendee in person, or be proven by one subscribing witness to the vendee's signature, and be recorded).
NORTH CAROLINA,	(Contract must be acknowledged by vendee in person or be proven by one subscribing witness to the vendee's signature, and be registered).
NORTH DAKOTA,	(Contract should be signed by two subscribing witnesses, and must be filed to reserve title as against third parties. There is no provision for recording. Some record-

(Class III—Continued.)

ing officers accept same for filing with one witness and some with no witnesses at all, but even if filed without the necessary witnesses it is doubtful if such filing has any effect except in the appearance it gives of legality).

SOUTH CAROLINA, (Where contract is for $100.00 or less it may be filed if signed by two subscribing witnesses, and it is not necessary that such witnesses prove it by oath. Where for more than $100.00, one of such witnesses must prove the instrument by his oath before it can be recorded).

SOUTH DAKOTA, (Contract should be signed by two subscribing witnesses to the vendee's signature, after which it must be filed).

CLASS IV.

States where conditional contracts of sale must be recorded to hold title as against third parties and may be acknowledged by vendor or vendee so as to entitle them to be recorded.

FLORIDA, (Contract is valid against all parties, excepting landlord's lien for rent, without recording for the term of two years after vendee secures possession. In order to record, vendor must sign and acknowledge the contract in person, or vendor's signature must be proven

(Class IV—Continued.)

	by one subscribing witness. There should always be two subscribing witnesses to vendor's signature)
	(Except for railroad equipment).
IOWA,	(Contract must be signed by all parties, and in order that same may be recorded the vendee or vendor must acknowledge in person).
	(Except railroad equipment).
NEW MEXICO,	(Contract must be acknowledged by vendor or vendee in person and be recorded).

CLASS V.

States where conditional contracts of sale must be recorded or filed to hold title as against third parties and must be acknowledged by vendee in person in order to be so recorded or filed.

COLORADO, CONNECTICUT, DISTRICT OF COLUMBIA,	(Where over $100.00).
NEW HAMPSHIRE,	(Must be accompanied by affidavit of vendee and vendor).
	(Except for railroad equipment).

CLASS VI.

States where conditional contracts of sale are not valid as against third parties even when acknowledged by the vendee and recorded.

(Class VI—Continued.)

ILLINOIS,	(Property to be secured against third parties must be held under a chattel mortgage acknowledged by mortgagor and duly recorded). (Except railroad equipment).
LOUISIANA,	(Except railroad equipment).

PART III.

DIGEST OF STATE LAWS.

ALABAMA,

A conditional contract of sale must be in writing signed by vendee, but does not need to be signed by vendor. No witness is necessary. No acknowledgment or proof is required. The contract must be recorded to hold title as against third parties, except that where the amount is less than $200.00 and the county where the record is to be made has more than 80,000 inhabitants (Jefferson, Mobile and Montgomery Counties) the contract need not be recorded. Where property covered is railroad equipment the contract must be recorded.

ARIZONA,

A conditional contract of sale must be in writing signed by vendee and vendor. No witness is necessary. The contract must be filed to hold title as against third parties. Where the original contract is sent for filing no acknowledgment is necessary, but where a copy is sent then the original must have been acknowledged by the vendee. Contracts covering railroad equipment

must be signed by all parties, be acknowledged by vendee and be recorded.

ARKANSAS, A conditional contract of sale should be in writing and be signed by the vendee but does not need to be signed by vendor. No witness is necessary. No acknowledgment or proof is required and it does not need to be either filed or recorded to hold title as against third parties, except where the property becomes an irremovable fixture upon real estate. Where the property is railroad equipment the contract must be signed by all parties, be acknowledged by the vendee and be recorded.

CALIFORNIA, A conditional contract of sale must be in writing signed by vendee, but does not need to be signed by vendor. No witness is necessary. No acknowledgment or proof is required and it does not need to be either filed or recorded in order to hold title as against third parties.

COLORADO, A conditional sale contract which enforces a direct obligation upon the vendee to pay the purchase price is held to be a chattel mortgage. The exact situs of the modern conditional sale contract is not definitely determined, where the rights of third parties intervene. It is advisable to secure a chattel

mortgage in writing, have it signed and acknowledged by the mortgagor and record it, when no question can be raised. Where the property covered is railroad equipment a conditional sale contract may be used, it must be in writing, be acknowledged by vendee and may be either recorded or filed.

CONNECTICUT, A conditional sale contract must be in writing signed by vendee, but does not need to be signed by vendor. No witness is necessary. Such a contract to be valid and hold title as against third persons must be recorded, and in order that same may be recorded, it must be acknowledged by the vendee. Where the property covered is railroad equipment the contract must be signed and acknowledged by all parties and must be recorded.

DELAWARE, A conditional sale contract should be in writing and be signed by vendee, it does not need to be signed by vendor. No witness is necessary, no acknowledgment or proof is required and it does not need to be either filed or recorded in order to hold title as against all third persons with the possible exception of a landlord's lien for rent of the premises, where the property in question is placed.

Where the property covered is railroad equipment, the contract must be acknowledged, does not state by whom, and be recorded.

DISTRICT OF COLUMBIA,

A conditional sale contract must be in writing and be signed by the vendee, it does not need to be signed by the vendor. No witness is necessary. Where the contract amount is more than $100.00 it must be recorded to hold title as against third persons, and must be acknowledged by the vendee in order to be so recorded. Where the amount is $100.00 or less no acknowledgment or recording is necessary to hold title as against all third persons with the possible exception of a landlord's lien for rent of the premises where the property in question is located. Railroad equipment no special statute.

FLORIDA,

A conditional sale contract should be in writing and be signed by vendee. No record is necessary for the term of two years as against all persons with the exception of a landlord's lien for rent of the premises where the property is located. In order that the vendor shall be protected after two years from the date when vendee secures possession and at all times as against a landlord's lien the said vendor must

sign the contract, and this should always be done before two subscribing witnesses. The vendor may then acknowledge the contract in person or his signature may be proven by the oath of one subscribing witness, after which it may be recorded. Where the property sold is railroad equipment the two years does not apply, and the contract must be signed by all parties, be acknowledged by the vendee and be recorded in order to hold title as against third parties.

GEORGIA, A conditional sale contract should be in writing, signed by vendee, but does not need to be signed by vendor. It may be acknowledged by the vendee in person, or a single witness to vendee's signature may sign the contract, and can later on prove the contract by his oath so that it may be recorded. Every such contract should be witnessed, and the salesman who takes it may be the witness, if he does not also sign the contract for and on behalf of the vendor. If he does so sign it for the vendor he should secure some disinterested third party to sign as a witness to the vendee's signature. Where the property covered is railroad equipment the contract should be signed by all parties thereto. A witness to the vendee's signature

can prove it for record. It must be recorded as a notice to third parties.

IDAHO, A conditional sale contract should be in writing, signed by vendee, but does not need to be signed by vendor. No witness is necessary. It does not need to be either acknowledged or proven, filed or recorded in order to hold title as against all third parties. Where the property covered is railroad equipment both parties must sign it, and the vendee must acknowledge it, or it must be proved as deeds are proved and be recorded.

ILLINOIS, A conditional sale contract in Illinois is only valid as between the parties thereto, and against an assignee for creditors under the state law. No witness is necessary. The vendee should sign the contract and the vendor does not need to sign it. It cannot be recorded so as to protect vendor's interests against third persons. An order form of contract should be used in Illinois providing for the giving of a chattel mortgage upon the property to secure the purchase price. A chattel mortgage must be signed by the mortgagor, be acknowledged by him and be recorded. Where the property covered is railroad equipment the contract may be one of conditional

sale and to hold title as against third persons must be acknowledged by the vendee and be recorded or filed.

INDIANA, A conditional sale contract must be in writing and be signed by vendee, but it does not need to be signed by the vendor. No witness is necessary. It does not need to be either acknowledged or proved, recorded or filed in order to hold title as against all third parties. Where the property covered is railroad equipment the contract should be signed and acknowledged by vendee and be recorded.

IOWA, A conditional sale contract must be in writing and should be signed by vendee and vendor. No witness is necessary to the vendee's signature. In order to hold title as against third parties, the contract must be recorded. The vendor or vendee may acknowledge the contract so that it can be recorded. Where the property sold is railroad equipment the contract must be signed by all parties, be acknowledged by the vendee and be recorded.

KANSAS, A conditional sale contract must be in writing and be signed by the vendee, it does not need to be signed by vendor. No witness is necessary. In order to hold title as against third parties the original

or a true copy must be filed. There is no requirement that the contract should be either proven or acknowledged by any one in order to be so filed. Where the property covered is railroad equipment then the contract shall be executed by all parties thereto, shall be acknowledged by the vendee or be proven as deeds are proven and be recorded.

KENTUCKY, A conditional sale contract must be in writing signed by the vendee. In order to hold title as against third parties it must be recorded. In order to be recorded, it must be acknowledged by the vendee in person, or be proven by the oath of either of two witnesses, each of whom must have signed the contract as a witness to the vendee's signature. The salesman who takes the order may act as one witness, if he does not also sign the contract on behalf of the vendor. Where the property covered is railroad equipment the instrument must be acknowledged by vendee or be proven by a witness as above and be recorded.

LOUISIANA, A conditional sale contract should be in writing and be signed by the vendee, but vendor does not need to sign the contract. No witness is necessary. No acknowledg-

ment or proof is required, and it cannot be filed or recorded, so as to protect the vendor's rights as against a bona fide purchaser. Such an instrument is held to be an ordinary contract of sale with a vendor's privilege. The proper contract for use in Louisiana is a lease with option to purchase, and this does not need to be acknowledged or proven by any one and does not need to be recorded, but it protects as against all except a landlord's lien for rent of the premises where such property is placed. Where the property covered is railroad equipment, a conditional sale contract may be used. It must be signed by all parties thereto, be acknowledged by vendee or proven as deeds are required to be proven and be recorded.

MAINE, A conditional sale contract must be in writing signed by the vendee, but does not need to be signed by vendor. No witness is necessary. No acknowledgment or proof is required but the contract must be recorded in order to hold title as against third persons. Where the property covered is railroad equipment the contract must be signed by all parties thereto and must be acknowledged by vendee or be proven as deeds are required to be proven and must be recorded.

MARYLAND, A conditional sale contract must be in writing signed by vendee but does not need to be signed by vendor. No witness is necessary. In order that the contract shall be valid as against third persons without notice, same or a memorandum thereof must be recorded. No proof or acknowledgment by any one is required. As to a landlord's lien for rent of the premises where such property is placed, it seems probable that where such record is made before the property covered thereby is moved upon the landlord's premises, then the conditional sale contract would be a protection as against a distress for rent. Where the property sold is railroad equipment the contract must be signed by all parties thereto, be acknowledged by the vendee in person and be recorded in the same manner as a deed of real estate.

MASSACHUSETTS, A conditional sale contract should be in writing signed by all parties thereto. No witness is necessary and no acknowledgment or proof is required. Where the property covered is such that it is afterwards wrought into or attached to real estate in such a manner as to make it a fixture, then in order that same shall be valid as to a mortgagee, purchaser or grantee of said real estate, the

contract must be recorded. As to ordinary personal property no record is necessary. Where the property covered is railroad equipment the contract must be signed by all parties, be acknowledged by the vendee and be recorded.

MICHIGAN, A conditional sale contract should be in writing and be signed by vendee. It does not need to be signed by the vendor. No witness is necessary. No acknowledgment or proof is required and it does not need to be recorded or filed in order to hold title as against third parties, except where the property involved goes to a person, firm or corporation regularly engaged or about to engage in the business of buying and selling such property (retailer), with the understanding that same may be resold, then as to all third parties a copy of the contract must be filed. Railroad equipment may be delivered under conditional sale contract but in order to be valid as against third parties, it must be acknowledged by vendee and be recorded.

MINNESOTA, A conditional sale contract should be in writing signed by the vendee, but does not need to be signed by the vendor. No witness is necessary. No acknowledgment or proof is required, but in order to hold title as against third parties,

the contract must be filed. If the property covered is railroad equipment the contract must be signed and acknowledged by the vendee and be recorded, to hold title as against third parties.

MISSISSIPPI, A conditional sale contract should be in writing signed by the vendee, but it does not need to be signed by the vendor. Within a period of three years from its date, such a contract is valid without recording or filing as to all third persons except a landlord's lien for rent of the premises where such property may be placed, and excepting as to creditors of a party who shall transact business as a trader or otherwise with the addition of the word "Agent," "Factor," "& Company," "& Co.", or like words, and fail to disclose the name of his principal or partner by a sign in letters easily read, placed conspicuously on the building where said business is transacted, or, as to creditors of a person who shall transact business in his own name without any such addition. In such instances the contract must be recorded to hold title as against creditors and other third parties. Such a contract may be recorded if signed by one subscribing witness, who takes his oath that he saw the vendee execute the instrument; this subscribing witness

may be the salesman who secured the order, provided he does not also sign the contract on behalf of the vendor. It is advised that all contracts taken in this state should be witnessed so that same may afterward be proved and recorded, if necessary. When the property covered is railroad equipment, same should be signed and acknowledged by the vendee in person and must be recorded, so as to protect vendor as against all third parties.

MISSOURI, A conditional sale contract should be in writing signed by vendee but does not need to be signed by vendor. In order to hold title as against third parties, it may be recorded if acknowledged by the vendee in person or where witnessed and proven by one subscribing witness. It is not necessary to record the contract, however, in order to hold title as against third parties, nor is it required that such contract shall be acknowledged by the vendee or be signed or proven by a subscribing witness. Simply get the vendee's signature on the contract, then file a copy and the vendor's rights will be protected. Where the property sold is railroad equipment the contract in order to be valid and hold title as against all third parties must be signed by all

parties thereto and be duly acknowledged by the vendee and be recorded.

MONTANA, A conditional sale contract must be in writing signed by the vendee, but it does not need to be signed by the vendor, and no witness is necessary. No acknowledgment or proof of the contract is required. In order to hold title as against third persons, the contract must be filed. Where the property covered is railroad equipment, it must be signed by all parties thereto, be duly acknowledged or proved the same as a deed of real estate, and it must then be recorded.

NEBRASKA, A conditional sale contract must be in writing signed by vendee, but it does not need to be signed by the vendor, and no witness is necessary. The contract need not be acknowledged or proved, but it must be filed to hold title as against third persons. In order to be so filed a copy of the contract may be sent, to which must be attached an affidavit of the vendor or lessor, or his agent or attorney, containing the names of the vendor or lessor and vendee or lessee, with a description of the property and its value, also the full and true interest of the vendor or lessor therein. Where the property cov-

ered is railroad equipment, the contract must be signed by all parties thereto, be acknowledged by the vendee or be proven in the same manner as deeds of real estate are proven and be recorded.

NEVADA, A conditional sale contract should be in writing signed by vendee, but does not need to be signed by vendor, and no witness is necessary. The contract does not need to be acknowledged or proven or filed or recorded in order to hold title as against third person. Where the property covered is railroad equipment same must be in writing signed by all parties thereto, be acknowledged or proven by the vendee and be recorded.

NEW HAMPSHIRE, A conditional sale contract must be in writing signed by vendee, but does not need to be signed by vendor, no witness is necessary. In order that the contract shall be valid as against third parties, it must be recorded, where the property covered is not household furniture. In order that the contract may be so recorded it is not necessary that it should be proven by a subscribing witness, nor acknowledged by the vendor or vendee. It must, however, have attached to it the affidavit of all parties to the agreement, setting forth the na-

ture of the transaction. If the vendor or vendee, or each, is a partnership, the affidavit may be made for either such partnership by any partner. Where the property covered is railroad equipment, it must be signed by all parties thereto, be duly acknowledged by the vendee, or be proven in the same manner as deeds of real estate are proven and must be recorded. No affidavit is necessary.

NEW JERSEY,

A conditional sale contract should be in writing signed by the vendee, but does not need to be signed by the vendor. In order to hold title as against third parties it must be recorded. It may be acknowledged by the vendee in person or a single witness to the vendee's signature can sign the contract and may then prove same by his oath so that it can be recorded. Every such contract should be witnessed and the salesman who takes it can be such subscribing witness, if he does not also sign the contract for and on behalf of the vendor; in case he does so sign the contract for the vendor, then he should secure some disinterested third party to sign as a witness to the vendee's signature. Where the vendee is a corporation the corporate seal should be impressed upon the contract and the witness should satisfy himself that

	such seal is the corporate seal, so that he may thereafter make oath to that fact in proving the contract. Where the property sold is railroad equipment, in order to be valid as against subsequent judgment creditors and bona fide purchasers for value, it must be duly acknowledged by the vendee and be recorded.
NEW MEXICO.	A conditional sale contract should be in writing signed by vendee and vendor, but no witness is necessary. The contract must be acknowledged by vendee or vendor and be filed or recorded in order to hold title as against third parties.
NEW YORK.	A conditional contract of sale should be in writing signed by vendee. It does not need to be either acknowledged by vendee or vendor, nor be signed or proven by a subscribing witness, but it must be filed in order to hold title as against third parties. There is no necessity for recording. On articles attached or to be attached to a building the contract shall contain a description of such building by street and number, etc., if known, so that same may be readily identified. Contracts for railroad equipment must be acknowledged by vendee and be recorded.
NORTH CAROLINA.	A conditional sale contract should be in writing signed by the vendee,

but does not need to be signed by the vendor. One witness to the vendee's signature is necessary. In order to hold title as against third parties, the contract must be registered and may be acknowledged by the vendee in person, or the subscribing witness to the vendee's signature may prove same by his oath, so that it may be registered. The salesman who takes the order may be the subscribing witness, provided he does not also sign the contract for and on behalf of the vendor; if he does so sign it for the vendor he should secure some disinterested third party to sign as a witness to the vendee's signature. Where the property covered is railroad equipment, same must be in writing, duly acknowledged (does not state by whom) and must be recorded.

NORTH DAKOTA, A conditional sale contract must be in writing signed by the vendee, but does not need to be signed by the vendor. In order to hold title as against third parties, the contract or an authenticated copy must be filed. It does not need to be either acknowledged or proven in order to be so filed. The law is not clear on the point as to witnessing such a contract, but it expressly provides that no chattel mortgage can be filed unless signed by two subscribing wit-

nesses. It is provided that conditional sale contracts shall be indexed the same as chattel mortgages, and this has given rise to some confusion among the filing officers. The only safe rule to follow where it is desired to have a contract filed, is to secure two subscribing witnesses to the vendee's signature, one of whom may be the salesman for the vendor if he does not also sign the contract for and on behalf of the vendor. It is not necessary that either witness should prove the contract by his oath. Where the property covered is railroad equipment, the contract must be in writing and must be acknowledged (does not state by whom) and be recorded in order to protect the vendor as against third persons.

OHIO, A conditional sale contract must be in writing signed by the vendee, but does not need to be signed by the vendor, no witness is necessary. No acknowledgment or proof is required, but in order to hold title as against third parties, copy of the contract must be filed and to it must be attached an affidavit of the vendor, his agent or attorney, stating the amount of the claim. Where the property covered is railroad equipment, the contract must be recordeed or filed to protect the vendor as against

third parties. No acknowledgment or proof is required.

OKLAHOMA, A conditional sale contract must be in writing signed by the vendee, but does not need to be signed by the vendor. In order to hold title as against third parties, the contract or a copy thereof must be filed. It is not necessary that the contract be acknowledged by the vendee or vendor, nor that it be either signed or proven by a subscribing witness or witnesses to the vendee's signature in order to be so filed. Where the property covered is railroad equipment the contract must be in writing executed by the parties thereto and duly acknowledged by the vendee or proved as deeds of real estate are required to be proved and be recorded.

OREGON, A conditional sale contract must be in writing signed by the vendee, but does not need to be signed by the vendor. No witness is necessary, and no acknowledgment or proof is required. So long as the property in question is not attached to real estate so as to become a fixture thereto, the contract does not need to be recorded or filed in order to hold title as against all third persons. Where, however, the property is thereafter so attached to real estate as to be-

come a fixture, the said contract shall be void as to any purchaser or mortgage of such real property, unless within ten days after such attachment a memorandum of the sale stating its terms and conditions, together with a description of the personal property sufficient to identify it, signed by the vendor and vendee, with notice endorsed thereon or attached thereto, signed by the vendor or his agent, describing such real property shall be filed. Where the property covered by the contract is railroad equipment, same must be acknowledged by the vendee and be recorded.

PENNSYLVANIA, A conditional sale contract in writing is enforceable between the parties thereto without recording or filing or acknowledgment or proof and no witness is required. Where the property is not attached or to be attached to real estate, in order that protection may be secured against third parties, the contract should be in the form of a lease or bailment with option to purchase, which does not require a subscribing witness and need not be acknowledged or proved or filed or recorded. Such instrument is valid as against all third persons with the possible exception of a landlord's lien for rent upon the premises where such property is

placed. Where the property is attached or to be attached to real estate a conditional sale contract in writing may be used and must be recorded. Where the property covered is railroad equipment, the contract must be in writing, be acknowledged (does not state by whom) and be recorded in order to protect the vendor as against third persons.

RHODE ISLAND, A conditional sale contract should be in writing signed by the vendee, but need not be signed by the vendor. No witness is necessary. The contract need not be acknowledged or proved, or filed, or recorded, in order to hold title as against third persons. Where the property covered is railroad equipment, in order to protect vendor as against third persons, the contract must be in writing, executed by all parties thereto, and be duly acknowledged by the vendee or proven in the same manner as deeds of real estate are proven and be recorded.

SOUTH CAROLINA, A conditional sale contract must be in writing signed by the vendee, but need not be signed by the vendor. In order to hold title as against third parties the contract must be recorded or filed. There is no provision for acknowledgment in person by the vendee.

Every contract should be signed by two subscribing witnesses to vendee's signature. Where the amount of such contract is $100.00 or less, it may then be filed, and it is not necessary that such subscribing witnesses prove the same by oath; where the amount of such contract is more than $100.00 the contract must be recorded, and before it may be so recorded it is necessary that one subscribing witness make oath that he saw the contract duly executed by the vendee. Such witness may be the salesman for the vendor, provided he does not also execute the contract for and on behalf of the vendor; if he does so sign it for the vendor he should secure two disinterested third parties to sign as witnesses to the vendee's signature. Where the property covered is railroad equipment the contract must be in writing, signed by all parties thereto and must be recorded to protect the vendor as against third parties. In order that same may be so recorded, the vendee's signature must be proved by a subscribing witness.

SOUTH DAKOTA, A conditional sale contract must be in writing, signed by the vendee, but need not be signed by the vendor. No acknowledgment by vendee is required. In order to hold

title as against third parties the contract must be filed. The chattel mortgage law expressly provides that before a mortgage may be filed it must be signed by two witnesses to the mortgagor's signature, but does not require that the witnesses shall prove the contract by their oaths. It has been held by court decisions that chattel mortgages and conditional contracts of sale, are in legal effect of the same nature. This has given rise to some confusion, as to whether or not two subscribing witnesses to the vendee's signature are required on a conditional sale contract, in order that it may be filed. From the best authority obtainable it does not seem that the witnesses are absolutely essential, but many recording officers refuse to file the contract without the two subscribing witnesses' signatures upon it, and they should, therefore, be secured if possible. One of the witnesses may be the agent for the vendor who takes the contract, if he does not also sign the said contract for and on behalf of the vendor. Where the property covered is railroad equipment the contract must be in writing and to protect the vendor as against third parties, same must be acknowledged (does not state by whom) and be recorded.

TENNESSEE, A conditional sale contract must be in writing, signed by the vendee, but does not need to be signed by the vendor.' No witness is required. It is not necessary to acknowledge or prove, or file, or record, such a contract in order to hold title in vendor as against third persons. Where the property covered is railroad equipment the contract must be in writing, be acknowldeged by the vendee in person, and be recorded.

TEXAS, A conditional sale contract must be in writing, signed by the vendee, but need not be signed by the vendor. In order to hold title in vendor as against third parties, the contract must be filed. Where the original instrument is sent for filing, then no witness to the vendee's signature is required, but where a copy of such contract is used for filing, the original must have been witnessed by two persons, or have been acknowledged by the vendee. Where the property covered is railroad equipment the contract must be in writing and must be recorded. There seems to be no requirement for acknowledgement or proof.

UTAH, A conditional sale contract must be in writing, signed by the vendee, but does not need to be signed by the vendor. No witness is re-

quired. The contract does not need to be acknowledged or proved or filed, or recorded, in order to hold title as against third parties. Where the property covered is railroad equipment the contract must be in writing, executed by all parties thereto, and in order that the vendor's title shall be protected, it must be acknowledged by the vendee in person and be recorded.

VERMONT, A conditional sale contract must be in writing, signed by the vendee, but need not be signed by the vendor. No witness is required and the contract need not be acknowledged or proved, but in order to hold title as against third parties, the original contract must be recorded. Where the property covered is railroad equipment the contract must be in writing executed by all parties thereto, and in order to protect the vendor as against third persons, said contract must be acknowledged by the vendee, or be proved as deeds of real estate are required to be proved and shall be recorded.

VIRGINIA, A conditional sale contract must be in writing signed by all parties thereto. No witness is necessary and no acknowledgment is required. In order to hold title as against third parties a memorandum of the contract must be dock-

eted. The original contract should be sent to the recording officer, who takes the necessary memorandum from it. Most recording officers accept a certified or sworn copy, but where the original is demanded it must be sent. The contract must be so drawn that the clerk can take from it for his memorandum these six essential items: (1) Date of contract, (2) amount due thereon, (3) when payable, (4) how payable, (5) a brief description of the goods or chattels, (6) names of vendor and vendee. Where the property covered is railroad equipment the contract must be acknowledged by the vendee in the same manner as a deed of real estate, is required to be acknowledged and be recorded.

WASHINGTON, A conditional sale contract must be in writing signed by all parties thereto. No witness is necessary and no acknowledgment or proof is required. In order to hold title as against third parties, the contract or a memorandum thereof must be filed within ten days after the vendee takes possession. Where the property covered is railroad equipment the contract must be acknowledged by the vendee in the same manner as a deed of real estate and must be recorded to protect the vendor as against third parties.

WEST VIRGINIA, A conditional sale contract must be in writing signed by vendee, but does not need to be signed by vendor. No witness is necessary and no acknowledgment or proof is required. In order to hold title as against third parties, a notice of the reservation must be recorded and such notice may be signed by the vendor. Where the property covered is railroad equipment the contract must be in writing and must be recorded to protect the vendor as against third persons. Does not state by whom it must be signed, nor that it must be acknowledged or proven in order to be so recorded.

WISCONSIN, A conditional sale contract must be in writing, signed by all parties thereto, and where the property sold is household furniture a copy of the instrument must be delivered to the vendee at the time of making the sale, and any payments made must be endorsed on said copy if the vendee so requests. No witness is necessary, and no acknowledgment is required. In order to hold title as against third parties a copy of the contract must be filed. Where the property covered is railroad equipment the contract must be in writing and in order to protect the vendor as against third parties, same must be recorded. There is

no provision for acknowledgment or proof.

WYOMING. A conditional sale contract must be in writing, signed by the vendee, but does not need to be signed by the vendor. No witness is required and no acknowledgment is necessary. In order to hold title as against third parties the contract must be filed. This may be done by sending a copy, to which must be attached an affidavit of the vendor, his agent or attorney, which states the names of such vendor and vendee, or lessor and lessee, and gives a description of the property, with the full and true interest of the vendor or lessor therein. Where the property is railroad equipment the contract must be signed by all parties thereto, be acknowledged by the vendee in person and must be recorded to protect the vendor as against third parties.

PART IV.

State Laws.

ALABAMA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Civil Code of 1907, §§ 3393, 3394; Elmore v. Fitzpatrick, 56 Ala. 400; Jones v. Pullen, 66 Ala. 306; Fairbanks, Morse & Co. v. Eureka Co., 67 Ala. 109; Hill v. Townsend and one, 69 Ala. 286; Fields v. Williams, 91 Ala. 502, 8 So. 808; Weinstein v. Freyer, 93 Ala. 257, 9 So. 285; Bingham v. Vandergrift, 93 Ala. 283, 9 So. 280; Seymour v. Farquhar, 93 Ala. 292, 8 So. 466; Piedmont, etc. Co. v. Thompson-Houston Motor Co., 12 So. 768 (No Ala. Cit.); Bent v. Jerkins, 112 Ala. 485, 20 So. 655; Cole v. Probst Brothers, 119 Ala. 99, 24 So. 884; Riley v. Dillon and one, 148 Ala. 283, 41 So. 768; Hall v. Nix, 156 Ala. 423, 47 So. 335; Stowers Furniture Co. v. Brake, 158 Ala. 639, 48 So. 89; Bass, Heard, Howle Co. v. International Harvester Co. of America, 169 Ala. 154, 53 So. 1014; Diamond Rubber Co. v. 4th National Bank, 171 Ala. 420, 55 So. 100; McEntire Wagnon & Thomas Co. v. Rock Hill Buggy Co., 172 Ala. 637, 55 So. 494; Vinegar Bend Lbr. Co. v. Soule Steam Feed Works, 182 Ala. 146, 62 So. 279; In re: Priegle Paint Co., 175 Fed. 586; In re: Dancy Hardware & Furniture Co., 198 Fed. 336.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a

contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without further formality in the way of acknowledgment or proof, or filing or recording; but in order to make it valid and to hold title as against purchasers for valuable consideration, mortgagees and attachment creditors it is necessary that same should be recorded. The instrument need not be acknowledged by the vendee or vendor, nor be signed or proven by a subscribing witness in order to be so recorded. Civil Code of 1907, § 3373.

Recording or Filing.

Where the contract has been duly executed by the vendee and the property covered thereby is within the state when such contract is made, it is necessary in order to hold title as against purchasers for valuable consideration, mortgagees and judgment creditors without notice thereof, that the original should be recorded (there is no provision for filing) with the Judge of Probate of the county where the party securing possession of the property resides. There is no time limit, but the record should be made if possible before vendee secures possession.

In case the property is removed at any time to another county than that in which it is first delivered, the contract must be recorded in such county within three months after such removal.

When property is brought into the state subject to such contract, then same must be recorded within three months thereafter with the Probate Judge of the county where said property is brought and remains.

Provided that in counties having, according to the last federal census or according to any succeeding federal census, a population of more than 80,000 inhabitants such contracts of less than two hundred ($200.00) dollars in amount need not be filed for record. This exempts Jefferson, Mobile and Montgomery counties where the amount involved is less than two hundred ($200.00) dollars. All other contracts must be recorded. Civil Code of 1907, §§ 3373 and 3394 as Amended by General Laws of 1911, pages 115-116. Brandon Printing Press Co. v. Bostick, 126 Ala. 247, 28 So. 705; Pulaski Mule Co. v. Haley and one, 187 Ala. 533, 65 So. 783.

Recording Fee.

The fee to the recording officer is fifteen cents per folio of one hundred words. In addition to this a tax of fifteen cents must be paid for each one hundred ($100.00) dollars or fraction thereof, of the contract amount. Civil Code of 1907, § 3720, as amended by General Laws of 1911, pages 156-157. Political Code of 1907, § 2082, Sub-division 7.

Re-Recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is provision for discharge of the contract from record upon payment, and within two months after demand in writing by vendee or his representative. The method of discharge is an entry to that effect upon the margin of the record by the vendor or his representative; and a civil penalty of two hundred ($200.00) dollars is imposed for failure to comply. Civil Code 1907, §4900.

Criminal Liability of Vendee.

It is a crime and punishable the same as larceny, to dispose of or to buy with knowledge any property covered by

a conditional contract of sale, whether said contract be recorded or not. Criminal Code 1907, §§ 7324, 7325, 7342.

Loss, Who Must Bear.

If property in possession of a vendee under conditional contract of sale is injured or destroyed without vendee's fault, before full payment is made, the title is held to be in vendor and he cannot thereafter enforce payment of the balance, unless the contract expressly makes vendee liable. Bishop v. Minderhout and one, 128 Ala. 162, 29 So. 11; Blue v. American Soda Fountain Co., 150 Ala. 165, 43 So. 709; Hoobler v. International Harvester Co., 185 Ala. 533, 64 So. 567.

Fixtures.

The effect produced by fastening to a building property sold under conditional contract of sale is not determined. The probability is, however, that where such a contract exists and the property is capable of removal, it can be taken possession of if the contract payments are not made, and especially so if the contract is recorded before the property becomes a fixture. Wood et al. v. Holly Mfg. Co., 100 Ala. 326, 13 So. 948; Warren v. Liddell, 110 Ala. 232, 20 So. 89.

Landlord's Lien

A landlord's lien for rent of the building in which such property may be placed would seem to be prior to the contract of conditional sale, unless the contract in question be recorded before the property is moved upon his premises. Civil Code 1907, § 4747. Glass v. Tisdale, 106 Ala. 581, 19 So. 70.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such contract, and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes it may become necessary to record same, and the notes are made

non-negotiable. Seymour v. Farquhar, 93 Ala. 292, 8 So. 466; Ensley Lumber Co. et al. v. Lewis, 121 Ala. 94, 25 So. 729; Thomason et al. v. Lewis, 103 Ala. 426, 15 So. 830.

Election of Remedies.

The law is not definitely settled as to whether or not a vendor may bring action for a money judgment and if unable to collect by this method, can thereafter replevin the property, but the trend of decisions is to the effect that such judgment may be recovered and if no levy is made upon the property covered by the conditional contract, or sale thereof had, the vendor may thereafter bring action for possession in case the money judgment is not paid. If, however, such property be levied upon under execution or attachment by the vendor and is sold he cannot thereafter maintain a replevin action for possession of the property. The contract should always expressly provide that vendor may pursue all legal remedies to collect the purchase price, and if unsuccessful may still retake the property. Tanner, etc., Engine Co. v. Hall, 89 Ala. 628, 7 So. 187; Montgomery Iron Works v. Smith, 98 Ala. 644, 13 So. 525; Thomason et al. v. Lewis, 103 Ala. 426, 15 So. 830; Hickman v. Richburg, 122 Ala. 638, 26 So. 136. See also Davis v. Millings, 141 Ala. 378, 37 So. 737; Forbs Piano Co. v. Wilson, 144 Ala. 586, 39 So. 645.

Re-Possession and Refund.

There seems to be no requirement for a refund upon re-possession. Riley v. Dillon and one, 148 Ala. 283, 41 So. 768.

Railroad Equipment.

Railroad equipment may be sold under conditional contract of sale which must be in writing and the original recorded within three months after the making thereof in the office of the Probate Judge for the county where such railroad shall have its principal place of business within the state, and if no office or principal place of business exists within the

state, then in the office of the Secretary of State, and all cars, engines, etc., must have plainly marked thereon the name of the vendor, lessor, or hirer, as the case may be. Fees for recording are 15 cents for each 100 words. Civil Code 1907, §§ 577, 3393.

ARIZONA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are recognized by statute law in this state. Revised Statutes, § 3278.

How Executed.

They must be in writing signed by all parties thereto.

Acknowledgment or Proof.

Such a contract where the term is less than three months does not need to be acknowledged or proved, nor filed or recorded; but where the period covered is for three months or more, then if the original owner would be protected as against all third parties, with the exception of those having actual notice, the contract must be filed. Where the original is sent no acknowledgment is required, but if a copy shall be used then the original must have been acknowledged by vendee. Revised Statutes, §§ 3278, 4126, 4127. National Cash Register Co. v. Bradbury, 12 Ari. 99, 95, Pac. 180.

Recording or Filing.

The law in this state provides for filing the contract, but makes no mention of recording. The filing officer is the county recorder of the county where the property is located, and if vendee be a resident of the state then a like filing shall be made with the recorder of the county where such vendee resides. Care should be taken where two filings are necessary, and the vendee's acknowledgment should be secured, or

duplicate originals should be executed. The time for filing is stated to be forthwith after the contract has been accepted, and should certainly be done before vendee gets possession if possible. Revised Statutes, §§ 3278, 4126, 4127.

Recording Fee.

The fee to the county recorder for filing such a contract is seventy-five cents. Revised Statutes, § 3198.

Re-Recording or Renewal.

A conditional contract of sale is valid for the term of four years; there is no provision for re-recording or renewal.

Discharge.

There is provision for discharging a chattel mortgage after payment, but none for a conditional sale contract. Revised Statutes, § 4130.

Criminal Liability of Vendee.

There is provision making it a felony to sell or dispose of chattel mortgaged property, but none for conditional sale contract. Penal Code, §§ 140-143.

Loss, Who Must Bear.

No cases found.

Fixtures.

No cases found.

Landlord's Lien.

There seems to be no provision that a landlord shall have a lien for rent upon property found on his premises.

Notes.

No cases found.

Election of Remedies.

No cases found.

Re-Possession and Refund.

No cases found.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be sold under conditional sale contract or lease with option to purchase. In order that vendor may be protected as against any subsequent creditor, lien holder, or any subsequent bona fide purchaser for value and without notice, the instrument must be executed by all parties thereto and be duly acknowledged by the vendee or lessee or bailee, or be duly proved before some person authorized by law to take acknowledgment of deeds. It shall then be filed for record with the Secretary of State, and must be paid in full within ten years from date, and each payment must be noted on the margin of the record. Each locomotive engine or car so sold shall have the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word "owner" or "lessor" or "bailor," as the case may be. Such property shall be liable for any repairs made upon it, and for any taxes assessed against it. Such contract shall be discharged when paid. The fee for filing such contract or entering discharge is ten dollars and a fee of two dollars and fifty cents is allowed for each entry made upon the margin of the record. Revised Statutes, §§ 3280, 3281.

Forms.

ACKNOWLEDGMENT BY INDIVIDUAL.

STATE OF ARIZONA, }
COUNTY OF PINAL. } *ss.*:

This instrument was acknowledged before me this 12th day of July, 1917, by Fred J. Jones.

MILES E. STONE,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

My commission expires June 16, 1918.

ACKNOWLEDGMENT BY CORPORATION.

STATE OF ARIZONA, }
COUNTY OF PINAL. } *ss.*:

This instrument was acknowledged before me this 12th day of July, 1917, by Story M. Ford as president of the Mill Supply Company.

MILES E. STONE,
Notary Public in and for ————.

My commission expires June 16, 1918.

Officers Before Whom Acknowledgments May Be Taken.

Within the State. A clerk of a court having a seal, a notary public, a county recorder, a justice of the peace.

Without the State but Within the United States. A clerk of a court of record having a seal, a commissioner of deeds for Arizona, a notary public.

ARKANSAS.

Legal Status of Conditional Sale Contracts.

Where property other than railroad equipment is delivered in Arkansas under conditional sale contract, there is no statute law governing the transaction; but the court decisions establish the rule, that such a contract is valid without recording or filing as against all third parties, except where the property covered thereby becomes an irremovable fixture upon real estate. Digest of Statutes, §§ 6678-6680. Andrews v. Cox, 42 Ark. 473; McIntosh & one v. Hill, 47 Ark. 363, 1 S. W. 680; McRea et al. v. Merrifield, 48 Ark. 160, 2 S. W. 780; Simpson v. Shackelford, 49 Ark. 63, 4 S. W. 165; Dedman v. Earle, 52 Ark. 164, 12 S. W. 330; Cincinnati Safe Company v. Kelly et al, 54 Ark. 476, 16 S. W. 263; Morris v. Cohn, 55 Ark. 401, 17 S. W. 342; Ames Iron Works v. Rea, 56 Ark. 450, 19 S. W. 1063; Sunny South Lumber Co. v. Neimeyer Lumber Co., 63 Ark. 668, 38 S. W. 902; Public Parks Am. Co. v. Embree, etc., Co., 64 Ark. 29, 40 S. W. 582; Little Rock Vehicle, etc., Co. v. Robinson, 75 Ark. 548, 87 S. W. 1029; Hyatt v. Bell, 83 Ark. 360, 103 S. W. 748; Bell v. Old, 88 Ark. 99, 113 S .W. 1023; Brownfield v. Jones Co., 98 Ark. 495, 136 S. W. 664; Watkins v. Curry, 103 Ark. 414, 147 S. W. 43; Hollenberg Music Co. v. Bankston, 107 Ark. 337, 154 S. W. 1139; Fox et al v. Delaney et al, 111 Ark. 640, 163 S. W. 157; Geiser Mfg. Co. v. Davis, 122 Ark. 193, 182 S. W. 557; In re: Lutz, 197 Fed. 492.

How Executed.

They should be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping

the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

In all commercial transactions such a contract is valid as to all parties without acknowledgment or proof, with the possible exception that where the property covered thereby becomes an irremovable fixture upon real property it cannot be repossessed.

Recording or Filing.

The contract is valid for the term of five years and does not need to be either recorded or filed to hold title as against all third persons with the fixture exception, as stated above. There is no provision in any case for recording or filing.

Recording Fee.

No fee is provided.

Re-Recording or Renewal.

No provision.

Discharge.

As there is no provision for recording or filing so there is no requirement for discharge.

Criminal Liability of Vendee.

It is a crime to dispose of or receive property on which a lien exists by chattel mortgage, or deed of trust, punishable on conviction by imprisonment in the penitentiary for not less than six months or more than two years, if the value of the property is over $10.00, and by a fine of not less than $10.00

nor more than $50.00 where the value of the property is $10.00 or less. This law does not expressly apply to conditional sale contracts, but seems broad enough to include them. Digest of Statutes, § 2011, 2013.

Loss, Who Must Bear.

Where property delivered under conditional contract of sale is destroyed while in vendee's possession and before payment, this does not render void the obligation to pay. Phillips v. Hollenberg Music Co., 82 Ark. 9, 99 S. W. 1105; Hollenberg Music Co. v. Barron, 100 Ark. 403, 140 S. W. 582.

Fixtures.

Where property delivered under conditional contract of sale has been fastened to a building in such a manner that it can be removed without material injury to the building or to itself, it may be repossessed if the price is not paid. Where, however, it has been attached to a building in such a manner as to become an irremovable fixture, and the rights of innocent third parties are involved the remedy is in doubt. Choate v. Kimball, 56 Ark. 61, 19 S. W. 108; Bemis v. Bank, 63 Ark. 625, 40 S. W. 127; Markle v. Stackhouse, 65 Ark. 23, 44 S. W. 808; Tenniswood v. Smith, 72 Ark. 500, 82 S. W. 834; Incorporated Town of Ozark v. Adams, 73 Ark. 227, 83 S. W. 920; Triumph Electric Co. v. Patterson, In re W. O. Craig Manufacturing Co., 211 Fed. 244; Fears v. Watson, 187 S. W. 178; Peck Hammond Co. v. Walnut Ridge School Dist., 93 Ark. 77, 123 S. W. 771.

Landlord's Lien.

There is no provision of law in this state giving any landlord a lien for rent on property found on his premises.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such contract, and is only a conven-

ient method of evidencing deferred payments. The notes however may be made non-negotiable by including terms which rightfully belong in the contract. Boozer v. Anderson, 42 Ark. 167; Kirby & Company v. Tompkins, 48 Ark. 273; 3 S. W. 363; Bank of Little Rock v. Collins, 66 Ark. 240; 50 S. W. 694; Triplett v. Mansur, etc. Co., 68 Ark. 230; 57 S. W. 261; Arden Lumber Co. v. Henderson Iron Works & Supply Co., 83 Ark. 240; 103 S. W. 185.

Election of Remedies.

Court decisions in this state hold that a vendor may not secure a money judgment for his debt and if unable to collect thereafter retake the property, nor may he retake the property and bring action later for the purchase price. No case seems to have arisen where the contract expressly gave vendor two or more remedies.

Edgewood Distilling Co. v. Shannon, 60 Ark. 133, 29 S. W. 147; Butler v. Dodson, 78 Ark. 569, 94 S. W. 703; Nashville Lumber Co. v. Robinson, 91 Ark. 319, 121 S. W. 350; Bowser Furniture Co. v. Johnson, 117 Ark. 496, 175 S. W. 516; Tanner et al, v. Johnson, 119 Ark. 506, 178 S. W. 376.

Re-Possession and Refund.

There appears to be no requirement in this state for refund upon repossession. Public Parks Amusement Co. v. Embree etc. Co., 64 Ark. 29, 40 S. W. 582; Little Rock Vehicle Co. v. Robinson, 75 Ark. 548, 87 S. W. 1029.

Railroad Equipment

Conditional contracts of sale, or leases, or bailments with option to purchase, covering railroad equipment in order to be valid as against any subsequent bona fide purchaser for value from, or any subsequent judgment creditor of the vendee or lessee or bailee, must be in writing, signed by all parties, be

acknowledged by vendee, or have vendee's signature duly proven, and be recorded with the secretary of state. Every car, engine, or other article so sold or leased, must have plainly marked on each side thereof, the name of the vendor, lessor or bailor followed by the word "Vendor," "Lessor," or "Bailor," as the case may be. Fee for recording is ten cents per hundred words. Digest of Statutes, §§ 6678-6680, 3498.

CALIFORNIA.

Legal Status of Conditional Sale Contracts.

There is no express statutory provision in this state regulating conditional contracts of sale, but their legality is recognized by the courts in many decisions. Helm v. Dumars & one, 3 Cal. 454; Miller v. Stein, 30 Cal. 402; Kohler & Hayes et al 41 Cal. 455; Hegler v. Eddy, 53 Cal. 597; March v. McKoy et al 56 Cal. 85; Hendy v. Dinkerhoff, 57 Cal. 3; Palmer v. Howard, 72 Cal. 293, 13 Pac. 858; Park & Lacy Co. v. White River Lbr. Co., 101 Cal. 37, 35 Pac. 442; Vermont Marble Company v. Brow, 109 Cal. 236, 41 Pac. 1031; Holt Mfg. Co. v. Ewing, 109 Cal. 353, 42 Pac. 435; Rodgers v. Bachman, 109 Cal. 552, 42 Pac. 448; Rayfield v. Van Meter, 120 Cal. 416, 52 Pac. 666; Van Allen et al v. Francis et al 123 Cal. 474, 56 Pac. 339; Kellogg v. Burr, 126 Cal. 38, 58 Pac. 306; Perkins v. Mettler, 126 Cal. 100, 58 Pac. 384; Jordan v. Myres, 126 Cal. 565, 58 Pac. 1061; Lundy Furniture Co. v. White et al, 128 Cal. 170, 60 Pac. 759; Houser & one v. Hargrove, 129 Cal. 90, 61 Pac. 660; Matteson v. Equitable Mining & Milling Co., 143 Cal. 436, 77 Pac. 144; Liver v. Mills et al, 155 Cal. 459, 101 Pac. 299; Bray v. Lowery, 163 Cal. 256, 124 Pac. 1004; Boas v. Knewing, 165 Pac. 690; Shook vs. Levi, 240 Fed. 121.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection

to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract does not need to be either acknowledged or proven to make it valid, not only as between the parties thereto, but as to all third persons, even though these may be bona-fide purchasers for value.

Recording or Filing.

It is not necessary to either record or file a contract of conditional sale in order to protect the vendor as against all persons. This state, however, has an exceptionally short statute of limitations, being four years on all contracts, obligations or liabilities founded upon an instrument in writing executed within this state.

Being two years on an action, contract, obligation or liability not founded upon an instrument in writing, or founded upon an instrument in writing executed out of the state. Code of Civil Procedure, §§ 335, 337, 339; Dore v. Thornburgh, 90 Cal., 64, 27 Pac. 30; Harrigan v. Home Life Ins. Co., 128 Cal. 531, 58 Pac. 180; Higgins v. Graham, 143 Cal. 131, 76 Pac. 898.

Recording Fee.

No fee is provided for.

Re-Recording or Renewal.

No provision.

Discharge.

As there is no provision for recording or filing, so there is no requirement for discharge.

Criminal Liability of Vendee.

It is a crime punishable as larceny to dispose of property covered by chattel mortgage. There is no specific law making it a crime to dispose of property held under conditional sale contract. Penal Code, §§ 507, 538.

Loss, Who Must Bear.

Where property is in the possession of a vendee under conditional contract of sale, and is destroyed before payment in full, the title is held to be in vendor and he cannot thereafter collect the balance unpaid. Waltz v. Silveria et al, 25 Cal. App. 717, 145 Pac. 169.

Fixtures.

Where property delivered under conditional contract of sale has been fastened to a building in such manner that it may be removed without material injury to the building or to itself, the vendor is entitled to its possession if the contract payments are not made, notwithstanding the fact that such property has become a fixture. In case the property has been so incorporated in the building as to become an integral part thereof, and so it cannot be removed without material damage to the building or to itself, the vendor would undoubtedly have a lien upon the building to be enforced by suit in equity. Tibbetts v. Moore, 23 Cal. 208; Hendy v. Dinkerhoff, 57 Cal. 3.

Landlord's Lien.

There is no provision of law in this state giving a landlord a lien for rent on property found on his premises.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such contract, and is only a conven-

ient method of evidencing deferred payments. It is possible however, to include provisions in such notes which supplement or vary the contract and make the notes controlling as they are usually executed subsequently to the contract. Southern California Music Co. v. Skinner, 17 Cal. App. 205; 119 Pac. 106; In re Farmers Dairy Ass'n, 234 Fed. 118.

Election of Remedies.

It is definitely settled in this state that where an action is brought for a money judgment on a conditional sale contract, or other proceedings taken to collect the debt, such acts constitute an election of remedies and no repossession of the property will thereafter be allowed. What the effect would be of a direct contract provision giving vendor more than one remedy has not been determined. Birkel Co. v. Nast, 20 Cal. App. 651, 129 Pac. 945; Park & Lacy Co. v. White River Lbr. Co., 101 Cal. 37; 35 Pac. 442; Holt Mfg. Co. v. Ewing, 109 Cal. 353; 42 Pac. 435; Muncy v. Brain, 158 Cal. 300, 110 Pac. 945.

Re-Possession and Refund.

Where a vendor takes possession of his property upon default he must advertise and sell, crediting the amount received upon the balance unpaid. A failure to so proceed will render a vendor liable to refund the entire amount paid in on the contract. By complying with such requirement a legal foreclosure is had and vendor may sue for the balance. Miller v. Stein, 30 Cal. 402; Matteson v. Equitable Mining, etc., Co., 143 Cal. 436, 77 Pac. 144; Liver v. Mills, et al, 155 Cal. 459, 101 Pac. 299; Bray v. Lowrey, 163 Cal. 256, 124 Pac. 1004.

Railroad Equipment.

No statute.

COLORADO.

Legal Status of Conditional Sale Contracts.

There are no express statutory provisions in this state governing conditional contracts of sale, and the courts of Colorado have taken a stand with reference to them which is different from that of any other state. It is established that a contract can only be conditional where it is optional with the vendee as to whether or not he will pay, and as in modern business such option is only allowed where the goods are placed on trial, there are as a matter of fact few if any conditional sale agreements used in Colorado. All contracts for the delivery of personal property wherein one party retains the title and the other is obligated to pay a purchase price or do other acts before ownership is transferred, are denominated chattel mortgages and are governed by the laws upon that subject. Courtright's Colo. Statutes, §§ 512-522; Harbison v. Tufts, 1 Colo. App. 140, 27 Pac. 1014; Brashear v. Christopher, 10 Colo. 284, 15 Pac. 403.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor. Courtright's Colo. Statutes, § 521; Singer Mfg. Co. v. Converse, 23 Colo. 247, 47 Pac. 264; Singer Mfg. v. Bohen, 31 Colo. 444, 72 Pac. 1097.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof or filing or recording, but where record or filing is to be made it should be acknowledged by the vendee in person, there is no provision for acknowledgment by vendor or proof by subscribing witness. Courtright's Colo. Statutes, §§ 512 and 513 as Amended by Chap. 50, Laws of 1915. Andrews & Co. v. Colo. Savings Bank, 20 Colo. 313, 36 Pac. 902.

Recording or Filing.

In order that a vendor may be protected as against bona fide purchasers or encumbrancers of the property from vendee, the contract must be recorded or filed with the county clerk or recorder of the county where the property is located. There is no definite time fixed for such action, but it should always be done before vendee gets possession or as soon thereafter as possible. If the property covered by the contract is all in one county then the original must be used, but where portions of it are located in different counties then a copy of the contract may be sent to each county. It was formerly required that all contracts must be recorded but filing is now provided for. No recording or filing is necessary as to third parties having actual notice. Courtright's Colo. Statutes, § 513, as Amended by Chap. 50, Laws of 1915 and § 522; George v. Tufts, 5 Colo. 162; Gerow v. Castello, 11 Colo. 560, 19 Pac. 505; Jones v. Clark et al, 20 Colo. 353, 38 Pac. 371; Clark v. Bright, 30 Colo. 199, 69 Pac. 506; Coors v. Reagan, 44 Colo. 126, 96 Pac. 966; In re Apple Suit & Cloak Co., 198 Fed. 322.

Recording Fee.

Fee for filing, twenty-five (25) cents. Fee for recording is one ($1.00) dollar and upwards according to the length of contract, and the county where record is made. Courtright's Colo. Statutes, § 513, as Amended by Chap. 50, Laws of 1915 and § 2538.

Re-Recording or Renewal.

A chattel mortgage must be renewed at the expiration of the term prescribed for payment. There is no such provision for conditional contracts of sale. Burchinnell v. Gorsline, 11 Colo. App. 22, 52 Pac. 413.

Discharge.

There is no provision for discharge of contract from record after payment, and no express penalty is imposed for failure to make such discharge. It is, however, always best upon request of the vendee or any other proper parties to discharge such contract from record after payment in full has been received.

Criminal Liability of Vendee.

It is a crime punishable as larceny in Colorado to sell or dispose of chattel mortgaged property, and as a conditional sale contract is held to be a chattel mortgage there, the same rule would undoubtedly apply to the sale or disposal of property within such state where the contract was still in force. Courtright's Colo Statutes, §§ 523-525, 1687.

Loss, Who Must Bear.

Where personal property has been delivered under conditional sale contract, making the vendee absolutely liable for payment of the installments, then if said property shall be destroyed, the loss falls upon vendee. 1st Congregational Church of Cripple Creek v. Grand Rapids School Furniture Co., 15 Colo. App. 46, 60 Pac. 948.

Fixtures.

The tendency in this state is to hold that personal property attached to a building is a fixture and cannot be removed

as against a mortgage of such real estate. Great care should be exercised in having the contract properly recorded as under no other circumstances can vendor hope to recover. Fisk v. People's Nat'l Bank, 14 Colo. App. 21, 59 Pac. 63; Puzzle Mining & Reduction Co. v. Morse Bros. M. & S. Co., 24 Colo. App. 74, 131 Pac. 791.

Landlord's Lien.

There is no provision of law in this state giving to a landlord the right of distress for rent upon personal property found in his premises.

Notes.

No cases found.

Election of Remedies.

No cases found.

Re-Possession and Refund.

No cases found.

Railroad Equipment.

Railroad equipment may be sold under conditional sale contract or a lease with option to purchase, either of which must be in writing and cannot be for a period of more than twenty-five years. Such contract in order to protect as against third parties must be signed and then acknowledged by the vendee or lessee before some officer authorized to take acknowledgment of deeds. Same must then be recorded, or a copy thereof filed in the office of the secretary of state and in the office of the recorder for each of the counties within the state wherein the railroad may be operated. Each engine or car so sold or leased shall have the name of the vendor or lessor, or his or its assignee plainly marked thereon. Courtright's Revised Statutes, 1913, §§ 5523-27.

Forms.

ACKNOWLEDGMENT BY AN INDIVIDUAL.

STATE OF COLORADO, } ss.:
COUNTY OF GILPIN. }

Henry Wilson appeared before me this twelfth day of July, 1917, in person and acknowledged the foregoing instrument to be his act and deed, for the uses specified therein.

Witness my hand and official seal.

HARVEY B. WELCH,
Notary Public in and for ————

{ NOTARIAL SEAL. }

My commission as notary public expires on the ———— day of ————.

STATE OF COLORADO, } ss.:
COUNTY OF GILPIN. }

This mortgage was acknowledged before me this 12th day of July, 1917, by Henry Wilson, mortgagor.

Witness my hand and official seal.

HARVEY B. WELCH,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

My commission as notary public expires on the.....day of.....

ACKNOWLEDGMENT BY A CO-PARTNERSHIP.

STATE OF COLORADO, } ss.:
COUNTY OF BOULDER. }

This mortgage was acknowledged before me this 12th day of July, 1917, by Jackson B. Wolf, for Wolf Brothers, mortgagors.

Witness my hand and official seal.

JOHN HENRY FREEMAN,
Notary Public in and for ————.

{ NOTARIAL } { SEAL. }

My commission as notary public expires on the.....day of.....

ACKNOWLEDGMENT BY A CORPORATION.

STATE OF COLORADO, } ss.:
COUNTY OF BOULDER. }

Be it remembered that on this twelfth day of July, A. D., 1917, before me, a notary public, residing in the City of Boulder, County of Boulder, in the State of Colorado, duly commisioned to take acknowledgments of proofs of deeds and other instruments in writing under seal, personally came James B. Martin, President of the Boulder Mercantile Company, who is known to me to be the person whose name is signed to the foregoing instrument, who, being by me duly sworn, deposes and says that he resides in the County of Boulder and State of Colorado; that he is President of the Boulder Mercantile Company; that the seal affixed to the foregoing instrument is the corporate seal of the Company; that it was affixed by order of said Company; and that he signed the corporate name of said Company to said instrument by like order, as President of said Company; and acknowledged that he

executed and delivered the said instrument on behalf of said Company as his free and voluntary act, and that the Company also executed said instrument as its free and voluntary act, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and official seal this twelfth day of July, A. D., 1917.

JOHN HENRY FREEMAN,
Notary Public in and for ————

{ NOTARIAL SEAL. }

My commission as notary public expires on the ———— day of ———.

STATE OF COLORADO, } ss.:
COUNTY OF BOULDER. }

This mortgage was acknowledged before me this 12th day of July, 1917, by Sherman L. Cary, president of Cary Motors Corporation, mortgagor.

Witness my hand and official seal.

JOHN HENRY FREEMAN,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

My commission as notary public expires on the.....day of.....

Officers Before Whom Acknowledgments May Be Taken.

Within the State. The judge, clerk or deputy clerk of any court of record; the recorder, clerk or deputy clerk of any county; or, within their counties, any notary public or justice of the peace.

Without the State but Within the United States. The secretary of any state or territory; the clerk of any court of record having a seal, whether a state, territorial or United States court; a notary public, or a commissioner of deeds appointed under the laws of the State of Colorado. Any other officer authorized thereto by the laws of the state or territory within which such acknowledgment is taken may also act, provided the official title, the authority and the signature of the officer acting are certified under the seal of the court by a clerk of some court of record of the county, city or district.

CONNECTICUT.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute laws in this state. Revised Statutes, §§ 4864-5. Laws 1905, Chap. 113; Laws 1909, Chap. 8; Hine v. Roberts, 48 Conn. 267; Loomis v. Bragg, 50 Conn. 228; In re Wilcox & Howe Co., 70 Conn. 220; Cohen v. Schneider, 70 Conn. 505, 40 Atl. 455; Wake v. Thomas, 78 Conn. 273, 61 Atl. 949; Lambert Hoisting Engine Co. v. Carmody, 79 Conn. 419, 65 Atl. 141; Pearne v. Coyne, 79 Conn. 570, 65 Atl. 973; United Machinery Co. v. Etzel & Sons, 89 Conn. 336, 94 Atl. 356.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Revised Statutes, §§ 4864-5.

Acknowledgement or Proof.

Where a conditional contract of sale covers household furniture, phonographs, phonograph supplies, musical instruments, bicycles, or property exempt from attachment or execution, it is valid as between the parties thereto, and also as to third persons, without acknowledgment or proof, or filing or

recording; but if it covers or includes other property it will not be valid and hold title as against third parties, unless it be recorded, and in order that the instrument may be so recorded it must be acknowledged by the vendee in person. There is no provision for acknowledgment by the vendor, or proof by a subscribing witness.

In case the contract covers watches, jewelry or precious stones and is made outside the state of Connecticut, then even though acknowledged and recorded in Connecticut it will not be protection as against a duly licensed pawnbroker there, who makes a bona fide loan upon such property. Revised Statutes, §§ 4864-5; Laws 1905, Chap. 113; Laws 1909, Chap. 8; National Cash Register Co. v. Lesko, 77 Conn. 276, 58 Atl. 967.

Recording or Filing.

Where the contract has been duly executed and acknowledged by the vendee in person, it may be recorded and is then valid as against all third persons with the exception of a pawnbroker making a bona fide loan upon watches, jewelry and precious stones where such contract is made outside the state of Connecticut. There is no provision for filing. The recording officer is the town or township clerk of the town or township in which the vendee resides.

The original contract must be sent for record within a reasonable time after its date. Title will certainly be reserved if the contract is recorded before vendee gets possession of the property. Revised Statutes, §§ 4864-5; Laws 1909, Chap. 8; In re Wilcox & Howe Co., 70 Conn. 220, 39 Atl. 163; National Cash Register Co. v. Woodbury, 70 Conn. 321, 39 Atl. 168; Beggs & Co. v. Bartels et al, 73 Conn. 132, 46 Atl. 874; Camp v. Thatcher Co., 75 Conn. 165, 52 Atl. 953; American Clay Machinery Co. v. New England Brick Co. 87 Conn. 369, 87 Atl. 731.

Recording Fee.

The fee to the recording officer is fixed at forty cents per page, but a larger charge is often attempted usually about ten cents per folio of one hundred words. Revised Statutes, § 4845.

Re-Recording or Renewal.

A contract in writing which is non-negotiable is valid for seventeen years; other contracts for six years. There is no provision for re-recording or renewal. Conditional contracts of sale are classed among the non-negotiable instruments.

Discharge.

There is no provision for discharge of such a contract from record after payment and no express penalty for failure to make such discharge. It is always well, however, that such a contract should be discharged after payment upon request being made therefor by the proper party, as any person damaged by such failure could undoubtedly recover his actual loss.

Criminal Liability of Vendee.

The vendee under conditional contract of sale who sells or conveys such property or any part thereof without consent of the vendor and without informing the person to whom he sells of the true condition, shall, upon conviction, be imprisoned not more than six months, or fined not more than $100.00. A person who removes or conceals such property, or who aids in or assents to such action, shall be fined not more than $500.00, or imprisoned for not more than six months. Revised statutes, § 1253.

Loss, Who Must Bear.

Where property is delivered under conditional sale contract and is injured or destroyed before payment, in full, the loss may fall upon either the vendor or vendee, depending upon the state laws where the loss occurs. In case the contract ex-

pressly provides that such loss shall be born by the vendee, that provision is enforceable. O'Neil-Adams Co. v. Eklund et al, 89 Conn. 232, 93 Atl. 524.

Fixtures.

The tendency is in this state toward making property attached to buildings in a substantial manner a part thereof, and not to permit removal where the rights of prior or subsequent mortgages of the real estate are involved. Camp v. Thatcher Co., 75 Conn. 165, 52 Atl. 953.

Landlord's Lien.

A landlord's lien for rent is not recognized by the laws of this state.

Notes.

The giving of notes under a conditional sale contract unless they contain too great a portion of the contract itself, or additional provisions, are only looked upon as evidencing payments and do not supersede the contract.

Election of Remedies.

Where a money judgment is taken covering the amount unpaid under a conditional contract of sale the property cannot afterwards be replevined even though the judgment is not collected. Repossession of property prevents recovery of price. Hine v. Roberts, 48 Conn. 267; Loomis v. Bragg, 50 Conn. 228; Appleton v. Norwalk Library Corp., 53 Conn. 4, 22 Atl. 681; Crompton v. Beach, 62 Conn. 25, 25 Atl. 446; Stalker v. Hayes, 81 Conn. 711, 71 Atl. 1099.

Repossession and Refund.

There appears to be no requirement in this state for a refund upon repossession. Pearne v. Coyne, 79 Conn. 570, 65 Atl. 973.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be sold under conditional sale contract which must be in writing, signed and acknowledged by all parties thereto and be recorded in order that same shall be notice as against subsequent attachment creditors or subsequent bona fide purchasers for value. The record shall be made with the secretary of state and each locomotive, engine or car so sold, shall have plainly marked on both sides thereof the name of the "owner" or "lessor" or "bailor" as the case may be. Same must be discharged after payment. Fees $1.00 for filing, and $1.00 for recording the first two pages or less, and fifty cents for each additional page. Revised Statutes, §§ 4811, 4866, 4867.

Forms.

ACKNOWLEDGMENT BY AN INDIVIDUAL.

STATE OF CONNECTICUT, } ss.:
COUNTY OF LITCHFIELD. }

On July 12, 1917, personally appeared John C. Anderson, signer and sealer of the foregoing instrument and acknowledged before me, same to be his free act and deed.

WILLIAM P. KEENAN,
Notary Public in and for ————

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY A CORPORATION.

STATE OF CONNECTICUT, } ss.:
COUNTY OF ———— }

July 12, 1917, then and there personally appeared before me George A. Weller, a notary public, Fred C. Door, Presi-

dent of the Mason Stone Company, a corporation, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed as president of the said Mason Stone Company, the above described corporation, and the free act and deed of the said corporation before me.

Witness my hand and notarial seal this 12th day of July, A. D., 1917.

GEORGE A. WELLER,
Notary Public in and for ————

{ NOTARIAL SEAL. }

Officers Before Whom Acknowledgments May Be Taken.

Within the State. Any judge of a court of record whether of the state or of the United States; a clerk of the superior court, court of common pleas or district court; a justice of the peace; a commissioner of the superior court; a commissioner of the school fund; a notary public, or any town clerk or assistant town clerk.

Without the State but Within the United States. A commissioner appointed under the laws of the State of Connecticut, or any other officer authorized to take acknowledgments of deeds in the state or territory where the acknowledgment is taken.

DELAWARE.

Legal Status of Conditional Sale Contracts.

There are no statutory provisions in this state governing conditional sale contracts, but their legality is established by court decisions. Where the debt has matured the vendor should act with diligence to recover his property, for if the rights of third parties intervene the vendor is deemed to have waived his title if he fails to act promptly. Fuller v. Webster, 28 Del. 538, 95 Atl. 335; Flint Wagon Works v. Maloney, 3 Boyce 137, 81 Atl. 502; Duplex Printing Press Co. v. Journal Printing Co., 1 Pennew 565, 43 Atl. 840; South Bend Iron Works v. Reedy, 5 Pennew 361, 60 Atl. 698; Townsend v. Melvin, 5 Pennew 495, 63 Atl. 330; Knowles Loom Works v. Knowles, etc., 6 Pennew 185, 65 Atl. 26; National Cash Register Co. v. Riley, 7 Pennew 355, 74 Atl. 362; Forbes v. Martin, 7 Houst. 375, 32 Atl. 327; Mathews v. Smith, 8 Houst. 22, 31 Atl. 879; Jones v. Savin, 96 Atl. 756.

How Executed.

They should be in writing signed by vendee but do not need to be signed by vendor, the acceptance of such a contract on the part of the vendor, by acting upon it, or by shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Smith v. Kemether et al, 1 Boyce 572, 76 Atl. 482; Ott v. Specht & one, 8 Houst. 61, 12 Atl. 721.

Acknowledgment or Proof.

Such a contract is valid not only between the parties thereto but as to all persons excepting a landlord's lien for rent, without being either acknowledged or proven.

Recording or Filing.

There is no provision by which such contracts can be either recorded or filed even if acknowledged or proven in the same manner as a deed of real estate. Recording or filing gives no additional security.

Recording Fee.

There is no provision for a recording or filing fee.

Re-Recording or Renewal.

As there is no requirement for recording or filing, so there is no necessity for renewal.

Discharge.

There is no provision for discharge.

Criminal Liability of Vendee.

There is no law making it a crime to dispose of property held under conditional sale contract.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such a manner that it may

be removed without material injury to the building or to itself, the courts of this state have decided that the vendor is entitled to possession of the property if the contract payments are not made. Where the property has been so attached to a building as to become a material part thereof, and where same cannot be removed without great injury to the building or to itself, the property cannot be replevined, but it is probable that a lien for the balance unpaid can be enforced against the building by an action in equity. Watertown S. E. Co. v. Davis, 5 Houst. 192; Knowles Loom Works v. Knowles etc., 6 Pennew 185, 65 Atl. 26; Ott v. Specht & one, 8 Houst. 61, 12 Atl. 721; In re: Frederica Water, Light & Power Co., 93 Atl. 376.

Landlord's Lien.

The owner of a building into which property covered by a conditional contract of sale is placed has a lien upon it for the rent of his premises which cannot be avoided, except by a waiver from the landlord. Revised Laws, §§ 19-69, Pages 868-876.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such agreement, and especially so where the contract itself provides that notes may be taken covering deferred payments. National Cash Register Co. v. Riley, 7 Pennew 365, 74 Atl. 362; Traux v. Parvis, 7 Houst. 330, 32 Atl. 227.

Election of Remedies.

It is definitely settled in this state that a vendor under conditional contract of sale cannot bring suit for a money judgment covering the amount unpaid, and thereafter replevin the property if he fails to collect such judgment. If he elects to avail himself of the right to sue for the purchase price, he cannot afterwards replevin the property.

Re-Possession and Refund.

No cases found.

Railroad Equipment.

Railroad and street railway equipment and rolling stock may be delivered on conditional sale contract or lease with option to purchase. In order that such a contract may be valid as to subsequent purchasers in good faith, and creditors, it must be acknowledged (does not state by whom), and be recorded with the secretary of state, and with the recorder of deeds for the county in which the vendee or lessee has its principal place of business within the state. Such record is valid for the term of ten years, there is no provision for renewal nor for discharge. The fees for recording are to the secretary of state two cents per line, to the recorder of deeds, one cent per line. Revised Code, pages 276, 552, 892, 911.

DISTRICT OF COLUMBIA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are recognized by the statute law of the United States governing the District of Columbia. Code of Law, §§ 546, 547; Minnis Co. v. L. C. Smih Bros. Co., 33 D. C. App. 357; Kimball v. Williams, 36 D. C. App. 43.

How Executed.

They must be in writing signed by all parties thereto. Code of Law, § 547; Sanders v. Wilson, 19 D. C. 555.

Acknowledgment or Proof.

Such a contract without regard to its amount is valid as between the parties thereto without acknowledgment or proof or filing or recording.

Where the contract is for more than $100.00, in order to hold title as against third persons without notice, it is necessary that same be acknowledged in person by the vendee and be duly recorded. There is no provision for acknowledgment by vendor or proof by subscribing witness.

If the contract is for $100.00 or less it does not need to be either acknowledged or filed, or recorded, but is valid as against all parties except perhaps a landlord's lien for rent of the premises where it may be placed. Code of Law, §§ 546, 547.

Recording or Filing.

Where the contract is for more than $100.00 and has been duly executed by all parties and acknowledged by the vendee in person, it is necessary in order to hold title as against third parties without notice that the original contract should be recorded. There is no provision for filing.

The law of conditional sales prescribes they shall be recorded in the same manner as chattel mortgages, and chattel mortgages must be recorded within ten days after acknowledgment, with the recorder of deeds for the District of Columbia. Where the contract is for $100.00 or less no recording or filing is necessary to hold title as against all third persons with the possible exception of a landlord's lien for rent. Code of Law, §§ 546, 547. Bridget v. Cornish, 1 Mackey 29; Colvert v. Baetjer, 4 D. C. App. 416; Baum v. Knabe & Co. Mfg. Co., 33 D. C. App. 237.

Recording Fee.

The fee to the recording officer is fifty cents for the first 200 words and fifteen cents for each additional 100 words. Code of Law, § 552.

Re-Recording or Renewal.

There is no provision for re-recording or renewal, and the contract is valid for the term of three years.

Discharge.

Provision is made for discharge of such a contract after payment. It may, however, be stated as a general rule that no discharge need be sent until same is requested by the vendee or some party in interest.

Criminal Liability of Vendee.

It is a crime punishable by a fine of not more than $100.00 or imprisonment for not more than 90 days to sell, conceal, remove without the District, or dispose of property held under conditional contract of sale, or to aid in so doing. Code of Law, § 833-A.

Loss, Who Must Bear.

No cases found.

Fixtures.

The effect produced by fastening to a building property delivered under conditional contract of sale has not yet been determined. The probability is, however, that where such a contract is duly recorded before the property became a fixture, either the property could be removed or an action in equity be brought to enforce the balance unpaid as a lien upon the building.

Landlord's Lien.

Where the contract is for more than $100.00 and has been duly recorded before the property is moved upon the landlord's premises, he has no lien for rent. Where the amount of such contract is for $100.00 or less and it is not so recorded the question is unsettled whether or not the landlord has a lien for rent upon such property found in his building. Code of Law, §§ 1229-1230. Johnson v. Douglas, 2 Mackey 36.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such agreement and especially so where the contract itself provides that notes may be taken cov-

ering deferred payments. Wall v. De Mitkiewicz, 9 D. C. App. 109.

Election of Remedies.

Where the vendor under conditional contract of sale takes action to secure payment of his debt even though unsuccessful, he cannot thereafter retake the property, or where the property has been retaken no action for the debt can thereafter be maintained. Smith v. Gilmore, 7 D. C. App. 192; Campbell Printing Press Co. v. Henkle, 19 D. C. 95.

Re-Possession and Refund.

No cases found.

Railroad Equipment.

No special statute.

Forms.

ACKNOWLEDGMENT BY AN INDIVIDUAL.

UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA. } *ss.*:

I, Robert D. Andrus, a notary public in and for the said District of Columbia, do hereby certify that Vinzenz Katz, the vendee named in contract hereto attached bearing date July 12, 1917, personally appeared before me in said District, the said party being personally well known to me as the person who executed the said agreement, and acknowledged the same to be his act and deed.

Given under my hand and official seal this 12th day of July, 1917.

ROBERT D. ANDRUS,
Notary Public in and for————

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY A CORPORATION.

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA. } *ss.*:

I, Henry A. Miller, a notary public in and for the District of Columbia, do hereby certify that on the 12th day of July, A. D. 1917, personally appeared Floyd L. Davis, personally well known to me (or proved by the oaths of credible witnesses to be) the attorney of the York Manufacturing Company, named in the foregoing deed, and by virtue and in pursuance of the authority therein conferred upon him acknowledged said deed to be the corporate act and deed of said York Manufacturing Company.

Given under my hand and official seal this 12th day of July, A. D. 1917.

HENRY A. MILLER,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

Officers Before Whom Acknowledgments May Be Taken.

Within the District. Any judge of a court of record and of law; any judge of the supreme, circuit, district or territorial courts of the United States; any justice of the peace, notary public, commissioner of a circuit court of the District, or a commissioner of deeds of the District appointed for the purpose.

Without the District but Within the United States. Any judge of a court of record, or any chancellor of any state, or any justice of the peace or notary public, or any officer who might take the acknowledgment within the District, but the official character of the officer acting must be duly certified, under official seal, by a register, clerk or other public officer having cognizance of the facts.

FLORIDA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are recognized by statutory provisions in this state, and their legality is established by court decisions. General Statutes, § 2516. Smith v. Gufford, 36 Fla. 481, 18 So. 717; Mizell Live Stock Co. v. McCaskill Co., 59 Fla. 322, 51 So. 547; Phenix Insurance Co. v. Hilliard et al, 59 Fla. 590, 52 So. 799; Bank of Jasper v. Tuten, 62 Fla. 423, 57 So. 238; Dillon v. Mizell Live Stock Co., 66 Fla. 425, 63 So. 824; Evans v. Kloeppel, 73 So. 180.

How Executed.

They should be in writing signed by all parties thereto. An oral contract may be valid between the parties, and a written contract signed by vendee alone will protect for the space of two years after he secures possession, but the vendor is the party who must acknowledge the contract or whose signature must be proven if the instrument is to be recorded, and should therefore sign it. There should always be two subscribing witnesses to the vendor's signature. General Statutes, § 2448. Scotch Mfg. v. Carr, 53 Fla. 480, 43 So. 427.

Acknowledgment or Proof.

Such a contract is valid without acknowledgment by vendee or vendor or proof by a subscribing witness or recording or filing, not only as between the parties thereto; but for the term of two years, as to all third persons with the possible exception of a landlord's lien for rent. Where it is desired to

record the vendor must acknowledge the instrument in person or have his or its signature proven by one subscribing witness. General Statutes, §§ 2448, 2481; Onyx Soda Fountain v. L'Engle, 53 Fla. 314, 43 So. 771.

Recording or Filing.

Such a contract does not need to be either recorded or filed for the period of two years after the vendee secures possession; but if same is not paid at the expiration of that time it should be recorded in order to hold title as against creditors of, and purchasers from the vendee, there is no provision for filing.

The recording officer is the clerk of the circuit court in the county where the vendee resides.

In order that such a contract may be recorded, it must be acknowledged by the vendor in person or such vendor's signature must be proven by one subscribing witness. General Statutes, §§ 1832, 2448, 2481, 2516. Jackson Sharpe Co. v. Holland, 14 Fla. 384; Campbell Mfg. Co. v. Walker, 22 Fla. 412, 1 So. 59.

Recording Fee.

The fee to the recording officer is 25 cents for the first 100 words, and 10 cents for each additional 100 words or part thereof. Some officers seek to charge also 5 cents for filing and 10 cents for indexing, but there would seem to be no justification therefor, as a recording fee does necessarily include taking possession of the paper, and should cover indexing.

Where a request is made for information that such a contract has been recorded this is additional service to be rendered by the recorder and many charge 25 cents for a certificate. General Statutes, §§ 1832, 1839.

Re-Recording or Renewal.

The contract is valid for the term of five years. There is no provision for re-recording or renewal.

Discharge.

Provision is made for discharge of such a contract after payment. It may, however, be stated as a general rule that no discharge need be sent until same is requested by the vendee or some party in interest.

The fee for recording such a discharge is the same as for recording the contract, according to length. General Statutes, §§ 1832, 1839, 2499.

Criminal Liability of Vendee.

Any person who shall sell, mortgage, dispose of, or removes from the county where located; or any person who shall knowingly conceal, buy, take, receive or assist in such removal, shall, upon conviction, be punishable by fine not exceeding $500.00 or by imprisonment for not more than one year. General Statutes, §§ 3356-3357.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where personal property is delivered to a contractor under conditional sale agreement and vendor knows the use to which such property will be put, or has reasonable grounds to ascertain such fact, and the property is thereafter used in the erection or equipment of a building by the contractor, then no repossession can be enforced by said vendor. American Process Co. v. Florida Pressed Brick Co., 56 Fla. 116, 47 So. 942.

Landlord's Lien.

A landlord has a lien for rent upon a tenant's property located in the premises. Where such tenant is in possession of property conditionally sold and the contract has been recorded, no such lien can affect it. Where, however, the contract has not been recorded and the tenant has not been in possession thereunder for a period of two years, the rule is not so easily stated, as there have been no decisions directly upon the point. It is the opinion of competent attorneys in Florida that no lien accrues under such circumstances. If the vendee under conditional sale contract is allowed to remain in possession for more than two years without recording same, a landlord's lien for rent will be prior. General Statutes, §§ 2237-2247. Hudnall v. Paine, 39 Fla. 67, 21 So. 791.

Notes.

The giving of notes under conditional sale contract does not ordinarily supersede such contract and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes, it may become necessary to record same, and the notes are made non-negotiable. Roof v. Chattanooga Wood Split Pully Co., 36 Fla. 284, 18 So. 597.

Election of Remedies.

If an action be brought under conditional sale contract for a money judgment, then even though same cannot be collected the vendor loses his lien upon the property and it cannot thereafter be repossessed. American Process Co. v. Florida White Pressed Brick Co., 56 Fla. 116, 47 So. 942.

Re-Possession and Refund.

No cases found.

Railroad Equipment.

A conditional contract of sale for railroad, or street railway equipment or rolling stock, in order to be valid as to subsequent judgment creditors or subsequent bona fide purchasers for value and without notice, must be in writing signed by all parties and be acknowledged by the vendee or lessee or bailee or be duly proven by a subscribing witness to his or its signature; and must be recorded in the office of the Secretary of State. Each locomotive, engine or car so sold, leased, or hired, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner" or "lessor" or "bailor" as the case may be. When paid in full the record may be discharged by recording an instrument in the said office, same being duly acknowledged by the vendor, lessor or bailor, or his or its assigns or by a declaration to like effect made upon the margin of the record. Fees to the Secretary of State for recording any paper are 20 cents for the first 100 words and 10 cents for each succeeding 100 words. The fee for noting a declaration on the record is $1.00. General Statutes, § 2845.

Forms.

PROOF BY WITNESS.

STATE OF FLORIDA,
COUNTY OF HERNANDO. } *ss.*:

On this 15th day of October, 1917, before me, Charles W. Ainsley, a notary public, personally appeared Earl Massey, whose name is affixed as a subscribing witness to the foregoing instrument between John Smith and Henry Jones and who being duly sworn did depose and say, that the said John Smith duly signed, sealed, and delivered the foregoing instrument to the said Henry Jones as his act and deed, in the presence of him, the said Earl Massey, and also in the presence of Carlton

H. Cole, the other subscribing witness to said instrument, who then at the request of the said John Smith duly signed and attested the same in the presence of the deponent and of the said John Smith.

Witness my hand and official seal on the date in this certificate first above written.

CHARLES W. AINSLEY,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY VENDOR IN PERSON.

STATE OF FLORIDA, }
COUNTY OF DUVAL. } *ss.*:

On this day personally appeared before me, Charles H. Brown, a notary public in and for said State and County, Thomas G. McFarrell, to me well known as the person described in and who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein expressed and prays that it may be admitted to record.

In Witness Whereof, I have hereunto affixed my hand and official seal at Jacksonville, Florida, this 12th day of July, 1917.

CHARLES H. BROWN,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY A CORPORATION.

STATE OF FLORIDA, }
COUNTY OF DUVAL. } *ss.*:

On this 12th day of July, 1917, before me, James C. Carter, a notary public in and for the county and state aforesaid, per-

sonally appeared Niles V. Shepard, to me known and known to me to be the president (or other officer) of the Harris Press Company, the above described corporation, and to me known to be the person who executed the foregoing instrument and acknowledged the execution thereof to be his free act and deed, and the free act and deed of the said Harris Press Company, for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

JAMES C. CARTER,
Notary Public in and for ————.

(NOTARIAL SEAL.)

Officers Before Whom Acknowledgments May Be Taken.

Within the State. Any judge, clerk or deputy clerk of a a court of record; a notary public or a justice of the peace, the certificate of acknowledgment in all cases being under seal.

Without the State but Within the United States. A judge or clerk of any United States, state, territorial or district court having a seal; any notary public or justice of the peace having a seal; the certificate of acknowledgment in all cases being under the seal of the court or officer as the case may be.

GEORGIA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Code of Ga., §§ 3318-19. Conder v. Holleman & One, 71 Ga. 93; Wilson v. Burks, 71 Ga. 862; Horne v. Guiser Mfg. Co., 74 Ga. 790; Rhodes v. Dickinson, 79 Ga. 724, 4 S. E. 164; Tidwell v. Burkett, 81 Ga. 84, 6 S. E. 816; Steen & One v. Harris, 81 Ga. 681, 8 S. E. 206; Bradley v. Brukett, 82 Ga. 255, 11 S. E. 492; Hays v. Jordan & Co., 85 Ga. 741, 11 S. E. 833; Mann v. Thompson, 86 Ga. 347, 12 S. E. 746; Atkinson v. Brunswick-Balke-Collender Co., 87 S. E. 891; Snook v. Raglan, 89 Ga. 251, 15 S. E. 364; Cottrell v. Merchants Bank, 89 Ga. 508, 15 S. E. 944; Ross v. McDuffie & One, 91 Ga. 120, 16 S. E. 648; Rhode Island Locomotive Works v. Empire Lbr. Co. et al, 91 Ga. 639, 17 S. E. 1012; Derrick v. Pierce, 94 Ga. 466, 19 S. E. 246; Austin v. Hamilton, 96 Ga. 759, 22 S. E. 304; Harp v. Patapsco, etc., 99 Ga. 752, 27 S. E. 181; Finlay v. Ludden & Bates, 105 Ga. 264, 31 S. E. 180; Penland v. Cathey, 110 Ga. 431, 35 S. E. 659; Commercial Pub. Co. v. Campbell P. P. Co., 111 Ga., 388, 36 S. E. 756; Anderson & One v. Leverette, 116 Ga. 732, 42 S. E. 1026; Monetrie Repair Co. v. Hill, 120 Ga. 730, 48 S. E. 143; Thomas Furniture Co. v. T. & C. Furniture Co., 120 Ga. 879, 48 S. E. 333; Wilmerfing etc. v. Rhodes, etc., 122 Ga. 312, 50 S. E. 100; Tucker v. Mann, 124 Ga. 1003, 53 S. E. 504; Crenshaw v. Wilkes, 134 Ga. 684, 68 S. E. 498; Myric v. Liquid Carbonic Co., 137 Ga. 154, 73 S. E., 7; Baughman Automobile Co. v. Emanuel, 137 Ga. 354, 73 S. E. 511; Venable v. Young, 137 Ga. 375, 73 S. E. 633; Southern Iron & Equipment Co. v. Voyles, 138 Ga. 258, 75 S. E. 248; Thomason v. Moore, etc., 139 Ga. 341, 77 S. E. 155; Bridges & Murphy v. McFarland, 143

Ga. 581, 85 S. E. 856; In re: Atlanta News Publishing Co., Intervention of Goss Printing Press Co., 160 Fed. 519; In re: Farmers Supply Co., 196 Fed. 990; In re: Rose, 206 Fed. 991; Union Trust Co. v. Beach Mfg. Co., 225 Fed. 93.

How Executed.

They should be in writing, signed by the vendee, but donot need to be signed by the vendor, the acceptance of such a contract on the part of the vendor, by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Guilford et al, v. McKinley, 61 Ga. 230; Penland v. Cathey, 110 Ga. 431, 35 S. E. 659; Walters v. Americus Jewelry and Music Co., 114 Ga. 564, 40 S. E. 803; Clark Bros. v. McNatt, 132 Ga. 610, 64 S. E. 795.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties it must be recorded. It is necessary in order that such a contract may be recorded for the vendee to acknowledge same in person, or otherwise that it be proven by one subscribing witness, to the vendee's signature. Code of Georgia, §§ 3318-19. Merchants etc. Bank v. Cottrell, etc., 96 Ga. 168, 23 S. E. 127; Cunningham & Co. v. Cureton, 96 Ga. 489, 23 S. E. 420; Hill v. Ludden et al, 113 Ga. 320, 38 S. E. 752; General Fire Extinguisher Co. v. Lamar, 141 Fed. 353; In re: Bondurant Hdwe. Co., 231 Fed. 247.

Recording or Filing.

After the contract has been duly executed by the vendee, it is necessary in order to hold title as against third parties that the original contract be recorded. There is no provision for

filing. The statute law provides that the contract must be recorded within thirty days from the date thereof, but the highest court in the state has decided that a record made within thirty days after the vendee secures possession of the property is sufficient.

The recording officer is the clerk of the superior court of the county where the vendee resides, but if the property is located in a different county the contract should also be recorded with the same officer in that county. An authenticated copy of the contract should be used where the original has already been recorded. Where property is without the state when the contract is made, such contract must be recorded as above set forth within six months after the property is brought into the state.

A subscribing witness can swear to the execution of such a contract so as to entitle same to be recorded, and the salesman who secures the order for the vendor may act as such subscribing witness provided he does not also execute the contract for and on behalf of the vendor. When it becomes necessary to record the contract in question it may be sent to the subscribing witness who makes oath that he saw same duly signed and executed by the vendee. This does away with the necessity of requesting the vendee to acknowledge the contract in person. Code of Georgia, §§ 3259-3264, 3318-3319. Bond v. Brewer, 96 Ga. 443, 23 S. E. 421; Holland Co. v. Adams, 103 Ga. 610, 30 S. E. 432; Anderson v. Adams, 117 Ga. 919, 43 S. E. 982; North v. Goebel et al, 138 Ga. 739, 76 S. E. 46; Rowe v. Spencer, 140 Ga. 540, 79 S. E. 144; Pickard & One v. Garrett, 141 Ga. 831, 82 S. E. 251; Farmers Bank of Doerm v. Avery & Co., 89 S. E. 409; In re: Gosch, Berlin Machine Works v. Hilton & Hodge, etc., 126 Fed. 627; In re: Brown Wagon Co., 224 Fed. 266.

Recording Fee.

The fee for recording such a contract is twenty-five cents for the first one hundred words and fifteen cents for each ad-

ditional one hundred words or part thereof. Some clerks make an additional charge of twenty-five cents for indexing, but there appears to be no provision of law authorizing same. Code of Georgia, §§ 3324, 5595.

Re-Recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is a provision in the laws of this state for discharge of conditional contracts of sale from record after payment, but no penalty is provided for failure to make such a discharge. It is, however, always advisable upon request of the vendee or any other proper party to discharge such a contract from record after payment in full has been received. Fee for discharge, fifteen cents. Code of Georgia, §§ 3270-3271.

Criminal Liability of Vendee.

It is a crime to dispose of property covered by conditional contract of sale, punishable by labor in the chain gang for a period not exceeding twelve months, or a fine not exceeding $1,000.00, or both. Code of Ga., Vol. VI, §§ 722-723, 723A, 1065; Miley v. State of Ga., 118 Ga. 274; 45 S. E. 245; Shirley v. State of Ga., 13 Ga. App. 676, 79 S. E. 752; Singleton v. State, 14 Ga. App. 527, 81 S. E. 596; McDuffie v. State, 90 S. E. 740.

Loss, Who Must Bear.

By statute it is provided that vendor must bear the loss when the property is injured or destroyed, unless the contract expressly places the loss upon vendee. Code of Ga., § 4123; Boyer v. Ashburn et al, 64 Ga. 271; Randle v. Stone & Co., 77 Ga. 501; Avery & Co. v. Middlebrooks et al, 142 Ga. 830, 83 S. E. 944; Wells et al, v. J. A. Fay & Eagan Co., 143 Ga. 732; 85 S. E. 873.

Fixtures.

The effect produced by fastening to a building property sold under conditional contract is to the end that if such attachment is to a reasonable degree permanent it cannot be removed as against the interests of third parties, even though the contract be properly recorded. Cunningham v. Cureton, 96 Ga. 489, 23 S. E. 420; Schofield's Sons Co. v. Woodward, 137 Ga. 65, 72 S. E. 509.

Landlord's Lien.

A landlord's lien for rent of the building in which such property may be placed is prior to the lien of such contract unless the contract is recorded before the property is moved upon his premises. Code of Ga., §§ 3340-3344; Cohen & Co. v. Chandler, 79 Ga. 427, 7 S. E. 160; Gartrell v. Clay, 81 Ga. 327, 7 S. E. 161.

Notes.

A purchase money note, reserving title to the property in question to the vendor until paid for, or a note evidencing deferred payments under a conditional sale contract, when transferred by indorsement without limitation, carries with it title to the property for which the note was given, as well as all remedies of the vendor as against the vendee.

If, however, the transfer of the note is made without recourse or by mere delivery, it has been held that the transferee gets no right to follow the property, and the title rests in the vendee as of the time when the transfer is made.

It is conceded as beyond question, however, that a conditional vendor may transfer his right in the property by a formal assignment of the contract, and an indorsement in blank of the notes if any have been given. Farrar v. Brackett, 86 Ga. 463, 12 S. E. 686; Cade v. Jenkins, 88 Ga. 791, 15 S. E. 292; Burch v. Pedigo & One, 113 Ga. 1157, 39 S. E. 493; English & One v. Hill, 116 Ga. 415, 42 S. E. 717; Bradley v. Cassels, 117

Ga. 517, 43 S. E. 857; McCullough v. Pritchett, 120 Ga. 585, 48 S. E. 148; Townsend v. S. O. Produce Co., 127 Ga. 342, 56 S. E. 436.

Election of Remedies.

The law in this state is definitely settled that a money judgment may be secured on the contract and every endeavor made to collect, after which if no payment is received, the property may be replevined. There are two effective methods in this state for securing payment. Either by purchase money attachment, or through a proceeding by which judgment is secured for the unpaid purchase money after which a quit claim conveyance of the property is made to the vendee and recorded with the superior court clerk of the county, and same is then levied upon and sold. Either of these methods when pursued obviates the necessity of a refund. Code of Ga., §§ 5084-86, 6037-39; Bowen v. Frick & Co., 75 Ga. 786; Cade v. Jenkins, 88 Ga. 791, 15 S. E. 292; Glisson v. Heggie Bros., 105 Ga. 30, 31 S. E. 118; Malsby Machinery Co. v. Parker, 138 Ga. 768, 76 S. E. 53; Coley v. Dortch & Co., 139 Ga. 239, 77 S. E. 77; Mallary Bros. Machinery Co. v. Thomas et al, 142 Ga. 786, 83 S. E. 783.

Re-Possession and Refund.

Where property held under conditional sale contract is repossessed upon default, the vendor is liable to repay vendee the full amount received under the contract, less a reasonable rental for use of the property, while in vendee's possession; and less an amount equal to any depreciation in value of said property by damage or injury over and above ordinary wear and tear which it may have sustained while in vendee's possession. (See Election of Remedies). Wilson v. Burks, 71 Ga. 862; Hays v. Jordan & Co., 85 Ga. 741, 11 S. E. 833; Snook v. Raglan, 89 Ga. 251, 15 S. E. 364; Commercial Pub. Co. v. Campbell, etc. Co., 111 Ga. 388, 36 S. E. 756; Scott v. Glover & Co., 7 Ga. App. 182, 66 S. E. 380; Brice & Co. v. Whitehurst & One, 8 Ga. App. 291, 68 S. E. 1075.

Railroad Equipment.

Railroad rolling stock or equipment may be delivered in Georgia under conditional sale contract or lease with option to purchase, which must be in writing and be recorded within six months after the date of its execution with the clerk of the superior court of the county wherein is situated within the state the principal office of the vendee or lessee railroad company. Such contract if made within the state shall be executed in the presence of and attested by, or be proved before a notary public, or justice of any court of the state, or a clerk of the superior court. If made without the state it shall be executed in the presence of and attested by, or proved before a commissioner of deeds for the State of Georgia, or a consul or vice consul of the United States, or by a judge of a court of record in the state where executed. Each locomotive engine and car so delivered shall have the name of the vendor or lessor or the assignee of such vendor or lessor plainly placed or marked on the same, or be otherwise so marked as to plainly indicate the ownership thereof. Civil Code, §§ 2790-2792.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF GEORGIA, }
COUNTY OF LOWNDES. } *ss.*:

In person before me comes Irvin A. Meeker, who being duly sworn, deposes and says that he was present and saw James Eaton sign and execute the attached contract for the purposes therein recited, and that the same was signed by him as a witness thereto.

IRVIN A. MEEKER.

Sworn and subscribed before me
this 12th day of July, 1917.
VICTOR DONNELL,
Notary Public in and for ————.

{ NOTARIAL }
{ SEAL. }

ACKNOWLEDGMENT BY AN INDIVIDUAL.

STATE OF GEORGIA. }
COUNTY OF SUMTER. } *ss.*:

Before me, James Haskins, a notary public in and for the said State and County, personally came Herman Goldmann, to me known to be the person described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

In Witness Whereof, I have hereunto set my hand and seal this 12th day of July, 1917.

JAMES HASKINS,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY CORPORATION.

STATE OF GEORGIA, }
COUNTY OF SUMTER. } *ss.*:

Be it remembered that on this 12th day of July, 1917, before me in the state and county aforesaid, personally came Leland T. Gregg, to me personally known and personally known to me to be the individual described in and who executed the foregoing contract, and to be the President of Morgan Shoe Company, a corporation, described therein; and the said Leland T. Gregg duly acknowledged to me that he executed the same in behalf of and as the free, true and lawful deed of said company, for the uses and purposes therein mentioned, and he acknowledged the same to be his true and lawful act.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

HENRY L. STAFFORD,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

Officers Before Whom Acknowledgments May Be Taken.

Within the State. Any judge of a court of record; a clerk of the superior court; a justice of the peace or a notary public.

Without the State but Within the United States. A commissioner of deeds for Georgia; the judge of any court of record in the state where the instrument was executed, the signature of the judge to be attested by the clerk of the court under seal; the clerk of any such court under seal of the court; a notary public of the state and county in which the instrument is executed, the authority of the notary to be certified under seal by the clerk of the court by which such notary was appointed, or, if appointed by the Governor, his authority to be certified by the Secretary of State.

IDAHO.

Legal Status of Conditional Sale Contracts.

There are no statutory provisions in this state governing conditional contracts of sale, except for railroad equipment, but their legality is established by court decisions. Mark Means Transfer Co. v. MacKinzie, 9 Idaho 165, 73 Pac. 135; Barton v. Groseclose, 11 Idaho 227, 81 Pac. 623; Kester v. Schuldt, 11 Idaho 663, 85 Pac. 974; Peasley v. Noble, 17 Idaho 686, 107 Pac. 402; Pease v. Teller Corp., 22 Idaho 807, 127 Pac. 981; Trousdale v. Winona Wagon Co., 25 Idaho 130, 137 Pac. 372.

How Executed.

They should be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid without acknowledgment by the vendee or vendor, and without being signed or proven by a subscribing witness, and without being recorded or filed; not only between the parties thereto, but as to all third persons, provided there is no fraud in the transaction.

Recording or Filing.

There is no provision under which such a contract can either be recorded or filed even when executed and acknowl-

edged in the same manner as a deed of real estate. The contract is good for five years without recording or filing.

Recording Fee.

As no recording or filing is necessary, no fee is designated.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

No cases found.

Landlord's Lien.

There is no law giving to a landlord any lien for rent on property delivered under conditional contract of sale and placed upon his premises.

Notes.

The giving of notes under conditional sale contract does not ordinarily have the effect to supersede such agreement and is only a convenient method of evidencing deferred payments. Barton v. Groseclose, 11 Idaho 227, 81 Pac. 623.

Election of Remedies.

The bringing of a suit to collect the purchase price under conditional sale contract constitutes an election, and the property cannot thereafter be replevined. North etc., Co. v. Strong et al, 25 Idaho 721, 139 Pac. 847.

Repossession and Refund.

No cases found.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be delivered under conditional sale contract, or lease with option to purchase, but in order that same shall be valid as to subsequent judgment creditors or subsequent purchasers for value and without notice, the contract must be in writing, signed by all parties thereto and be acknowledged by the vendee, or lessee or bailee, or be duly proven in the same manner as a deed of real estate is required to be proven. It must then be recorded with the secretary of state. Each locomotive engine or car so sold, leased, or hired shall have the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word "owner," "lessor," or "bailor" as the case may be. When paid in full the contract may be released by a declaration in writing duly attested, made on the margin of the record by the vendor, lessor or bailor or his or its assigns, or by a separate instrument of release duly acknowledged by the same parties and recorded with the secretary of state. Fees for recording the contract or release $2.00 and for noting release on the margin as aforesaid $1.00. Civil Code, §§ 2827, 2828.

ILLINOIS.

Legal Status of Conditional Sale Contracts.

Conditional sale contracts are not provided for by the statute laws of this state, except as to railroad equipment. They are valid as between the parties thereto, and as to third persons having notice. Also as to an assignee of the vendee under state law, but not as to a trustee in bankruptcy. (See Chattel Mortgage Law). Ketchum v. Watson, 24 Ill. 591; McCormick et al v. Hadden, 37 Ill. 370; Murch v. Wright, 46 Ill. 487; Arnold v. Stock, 81 Ill. 407; Home Sewing Machine Co. v. Wille, 85 Ill. 333; Sumner v. McKee, 89 Ill. 127; Van Duzor v. Allen, 90 Ill. 499; Blatchford v. Boyden, 122 Ill. 657, 13 N. E. 801; Davis et al v. Chicago Dock Co., 129 Ill. 180, 21 N. E. 830; Chickering et al v. Bastress et al, 130 Ill. 206, 22 N. E. 542; Lenz v. Harrison, 148 Ill. 598, 36 N. E. 567; Hooven et al v. Burdett, 153 Ill. 672, 39 N. E. 1107; Peoria Mfg. Co. v. Lyons, 153 Ill. 427, 38 N. E. 661; Schwartz v. Messinger, 167 Ill. 474, 47 N. E. 719; Sondheimer, et al v. Graeser, 172 Ill. 293, 50 N. E. 174; Gundy v. Biteler, 6 Ill. App. 510; Fairbanks v. Malloy, 16 Ill. App. 277; Cunningham v. Nelson Mfg. Co., 17 Ill. App. 510; Thompson v. Duff, 19 Ill. App. 75; Cleveland Co-operative Stove Co., 30 Ill. App. 372; Barbour v. Perry, 41 Ill. App. 613; New England Piano Co. v. Maxwell, 67 Ill. App. 593; Hallbech & One v. Stewart, 69 Ill. App. 225; Boehn v. Griebenow, 78 Ill. App. 675; Mathews Apparatus Co. v. Neal, 89 Ill. App. 174; Magerstadt v. Harder, 95 Ill. App. 303; Singer Mfg. Co v. Illington, 103 Ill. App. 517; Herbert v. Rhodes Burford Furniture Co., 106 Ill. App. 583; Judy v. Evans, 109 Ill. App. 154; O'Neil v. Rogers, 110 Ill. App. 622; Roesenbaum, et al v. King, 114 Ill. App. 648; Edward Thompson Co. v. Collins, 151 Ill. App. 545;

In re: Rodgers, 125 Fed. 169; In re: Galt, 128 Fed. 64; In re: Flanders, 134 Fed. 560; In re: Pittsburg Big Muddy Coal Co., Goodman Mfg. Co. v. Skaggs, et al, 215 Fed. 703.

How Executed.

The contract should be in writing signed by the vendee but does not need to be signed by the vendor, the acceptance of such a contract on the behalf of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

There is no provision of law by which such a contract can be either acknowledged by the vendee or vendor or be proven by a subscribing witness so as to entitle it to be either filed or recorded, and there is no protection to the vendor in such filing or recording. Gilbert v. National Cash Register Company, 176 Ill. 288, 52 N. E. 22.

Recording or Filing.

It has been decided by the highest court in this state that even though a conditional sale contract be acknowledged or proven in the same manner as provided for a chattel mortgage and thereafter recorded, the vendor gets no better rights under such circumstances than where no acknowledgment or proof or recording has been made. These contracts are simply ignored so far as recording or filing is concerned. St. Louis Iron & Machine Works v. Kimball, 53 Ill. App. 636; People v. Kirkpatrick, 69 Ill. App. 207; Herbert v. Rhodes Burford Furniture Co., 106 Ill. App. 583.

Recording Fee.

There is no provision for a recording fee on conditional sale contracts.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

No provision for conditional sale contract. Where chattel mortgaged property is sold or disposed of the mortgagee is liable upon conviction to be fined twice its value or be imprisoned in the county jail not to exceed one year. Hurd's Rev. Statutes, 1915. Chap. 95, §§ 6-7.

Loss, Who Must Bear.

The rule of liability in this state where property conditionally sold is destroyed before payment in full is not definitely settled. A fair inference from the decisions made pertaining to such facts would be that if the loss is expressly placed upon the vendee by the wording of the contract, such liability would be enforced. Cooper v. Chicago Organ Co., 58 Ill. App. 248; Quaker Mfg. Co. v. Zucker et al, 124 Ill. App. 547.

Fixtures.

Where property delivered under conditional sale contract has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the vendor is entitled to possession of the property, upon default if no rights of third parties have intervened. Under such cir-

cumstances where the rights of third parties would be affected and the property in question has been securely fastened to the building so as to make it a legal fixture, it seems probable that no removal could be had upon default. The proper remedy would be through an action to foreclose the common law lien of such contract, thereby affording an opportunity for a determination of the rights of all parties interested. Sword v. Low, 122 Ill. 487, 13 N. E. 826; Fifield et al v. Farmers National Bank et al, 148 Ill. 163, 35 N. E. 802; Simpson Brick Press Co. v. Wormley, 61 Ill. App. 460; Kaestner v. Day, 65 Ill. App. 623; Andrews & Co. v. Chandler, 27 Ill. App. 103; Schumacher v. Allis Co., 70 Ill. App. 556.

Landlord's Lien.

A landlord has a lien for rent on property located on the premises which is prior to even a chattel mortgage, unless same is recorded before the mortgaged property is moved upon his premises. Hurd's Revised Statutes 1915, Chap. 80, Pages 1631-1635; Kellogg Newspaper Co. v. Peterson, 162 Ill. 158; 44 N. E. 411; Elliott v. Emerson Piano Co., 80 Ill. App. 51.

Notes.

The giving of notes under a conditional sale contract does not supersede the instrument and is only a convenient method of evidencing deferred payments. Fleury & Co. v. Tufts, 25 Ill. App. 101; Hercules Iron Works v. Hummer, 49 Ill. App. 598; Walkau v. Manitowoc Seating Co., 105 Ill. App. 130.

Election of Remedies.

No cases found.

Repossession and Refund.

The rule as to refund upon repossession is not clearly defined, but would seem to be that vendee is entitled to a return

of all payments, less a reasonable sum to vendor for depreciation and rent of the property while in vendee's possession. Latham v. Sumner, 89 Ill. 233; Bent v. Jones, 172 Ill. App. 62; Singer Mfg. Co. v. Treadway, 4 Ill. App. 57; Branstetter Motor Co. v. Silverberg, 140 Ill. App. 451.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be delivered under conditional sale contract or lease with option to purchase, but in order that such agreement shall be valid as against any subsequent judgment creditor of or any subsequent purchaser for a valuable consideration without notice from the vendee, lessee or bailee, the contract must be in writing signed by the parties thereto and be acknowledged by the vendee in person as deeds of real estate are required to be acknowledged. Such agreement shall then be recorded with the secretary of state, or a copy may be filed in his office. The fee for filing being one dollar. Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word owner, lessor or bailor as the case may be. Hurd's Revised Statutes 1915, Chap. 114, pages 2080-2081, Sec. 52.

Chattel Mortgages.

Each note given under a chattel mortgage should have written or printed across its face these words: "This note secured by chattel mortgage," otherwise the mortgage will be void.

It is conceded as beyond all question that a conditional sale contract in Illinois, even though acknowledged by the vendee in person and recorded, is no protection as against bona fide purchasers or mortgagees, or attachment or execution creditors of the vendee.

It is valid between the parties thereto, and as against the vendee's assignee under state law, also as against third parties

having actual notice of its existence. A chattel mortgage properly acknowledged by the mortgagor and recorded is therefore the only adequate security to a vendor selling personal property on time in Illinois. Even where this is done the mortgagee is obliged to enforce his remedy by foreclosure immediately upon default or the rights of third parties will intervene and supersede him. A debt secured by chattel mortgage should certainly not be allowed to remain past due for more than 30 days before the property is seized, or foreclosure begun. Hurd's Revised Statutes 1915, Chap. 95, pages 1767-1773.

Chattel Mortgage Law.

That no mortgage, trust, deed or other conveyance of personal property having the effect of a mortgage or lien upon such property shall be valid as against the rights and interests of any third person unless possession thereof shall be delivered to and remain with the grantee, or the instrument shall provide for the possession of the property to remain with the grantor and the instrument is acknowledged and recorded as hereinafter directed and every such instrument shall for the purpose of this act be deemed a chattel mortgage. Hurd's Revised Statutes 1915, Chap. 95, Sec. 1.

Such instrument shall be acknowledged before a justice of the peace, or the county judge of the county where the mortgagor resides, or before the clerk or any deputy clerk of any municipal court in such county, or if the mortgagor is not a resident of the state at the time of making the acknowledgment, then before any officer authorized by law to take acknowledgment of deeds;

Provided, however, that in counties having a population of more than 200,000, such instrument, if the mortgagor is a resident of the state at the time of making the acknowledgment, shall be acknowledged before a justice of the peace of the town or precinct where the mortgagor resides, or if there be no justice of the peace in such town or precinct, such instrument

shall be acknowledged before the clerk or deputy clerk of the municipal court in the district in which the mortgagor resides, or if there be no such clerk or deputy clerk, before the county judge of the county in which the mortgagor resides.

Provided further that such acknowledgment may be made either by the mortgagor or a person duly authorized by said mortgagor to act as his attorney in fact. The instrument authorizing such acknowledgment shall be substantially in the following form:

I, ..., the mortgagor do hereby make, constitute and appoint ..... my attorney in fact to appear for me and in my behalf before (give name of officer and official title before whom the acknowledgment is to be made), and acknowledge the execution of the within instrument in my name and for me for all purposes as I might do, with the same force and effect.

Given under my hand and seal this .....day of ....., 191.....

.....(SEAL.)
(Mortgagor).

The certificate of acknowledgment if made by the mortgagor in person shall be in the following form:

This (name of instrument) was acknowledged before me by (name of mortgagor). (When acknowledgment is made by a resident, insert the words "and entered by me") this .... day of ....., 191....

Witness my hand and seal

.....(SEAL.)
(Name of Officer.)

If the acknowledgment is made by an attorney in fact the certificate of acknowledgment shall be substantially in the following form:

This (name of instrument) was acknowledged before me by the within named ..... by (name of attorney), his attorney in fact for all purposes named in said instrument, and entered by me this .....day of....., 191..

.....(SEAL.)
(Name of Officer).

Said instrument authorizing the acknowledgment by attorney in fact as herein specified shall be signed by the mortgagor and shall be acknowledged before any officer authorized to take acknowledgment of deeds. Hurd's Revised Statutes 1915, Chap. 95, Sec. 2.

If the acknowledgment is by a resident of this state, the justice of the peace, clerk or deputy clerk of the municipal court or county judge shall enter in his docket or in some book kept for that purpose, a memorandum thereof substantially as follows: A. B. (name of mortgagor) to C. D. (name of mortgagee). Hurd's Revised Statutes 1915, Chap. 95, Sec. 3.

Such mortgage, trust, deed or other conveyance of personal property, acknowledged as provided in this act, shall be admitted to record by the recorder of the county in which the mortgagor shall reside at the time the mortgage is executed and recorded, or in case the mortgagor is not a resident of the state, then in the county where the property is situated and kept and shall thereupon, if bona fide, be good and valid from the time it is filed for record until the maturity of the entire debt or obligation or extension thereof made as hereinafter specified:

Provided such time shall not exceed three years from the filing of the mortgage unless within 30 days next preceding the expiration of such three years or if the debt or obligation ma-

tures within such three years, then within 30 days next preceding the maturity of said debt or obligation, the mortgagor and mortgagee, his or their agent or attorney shall file for record in the office of the recorder of deeds in the county where the original mortgage is recorded also with the justice of the peace or his successor, upon whose docket the same was entered, an affidavit setting forth particularly the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned and if such mortgage is for the payment of money, the amount remaining unpaid thereon and the time when the same will become due by extension or otherwise; which affidavit shall be recorded by such recorder and entered upon the docket of said justice of the peace and thereupon the mortgage lien originally acquired shall be continued and extended for and during the term of one year from the filing of such affidavit, or until the maturity of the indebtedness or extension thereof secured by said mortgage: Provided such time shall not exceed one year from the date of filing such affidavit. Hurd's Revised Statutes 1915, Chap. 95, Sec. 4.

That all notes secured by chattel mortgages shall state upon their face that they are so secured, and when assigned by the payee therein named, shall be subject to all defenses existing between the payee and payor of said notes, the same as if said notes were held by the payee therein named, and any chattel mortgage securing notes which do not state upon their face the fact of such security shall be absolutely void. Hurd's Revised Statutes 1915, Chap. 95, Sec. 25.

Recording Fee.

The counties of the state are divided into three classes as regards population and fees are fixed for each class. In general it may be said the fee is 10 cents for recording each 100 words and 25 cents additional for an acknowledgment or certificate that the record has been made. Hurd's Revised Statutes 1915, Chap. 53, §§ 13, 14, 17, Chap. 115, §§ 1, 9.

The fees for acknowledgment are 35c, and 15c per 100 words for docketing same. Hurd's Revised Statutes 1915, Chap. 53, Sec. 40.

Forms.

ACKNOWLEDGMENT BY CORPORATION.

In case the mortgagor is a corporation, then the chattel mortgage should end as follows:

"In witness whereof the said ....., pursuant to authority from its Board of Directors or Trustees, has caused these presents to be signed by ....., its President, and countersigned by ....., its Secretary, and its corporate seal to be hereto affixed this .....day of ....., 191....."

(Corporate Seal) .....

Attest: Official Title.

..... Secretary.

STATE OF ILLINOIS, } ss.:
COUNTY OF..... }

I, ..., a ..... in and for said.....do hereby certify that..... president of the above named corporation, personally known to me to be the same person, whose name is subscribed to the foregoing instrument as such president, and to be such president of said corporation, appeared before me this day in person and acknowledged that he, as such, signed, sealed and delivered said instrument as the free and voluntary act of said corpora-

tion and as his own free and voluntary act, as such president thereunto duly authorized for the uses and purposes therein set forth. Entered by me this ..... day of ..... 191...

Given under my hand and official seal this .....day of ....., 191.....

.....

Notary Public in and for ———.

{ NOTARIAL SEAL }

INDIANA.

Legal Status of Conditional Sale Contracts.

There exists in this state no statutory provisions concerning conditional sale contracts, upon ordinary personal property, but they are recognized to the fullest extent by court decisions. Thomas et al v. Winters et al, 12 Ind. 322; Plummer & One v. Shirley, 16 Ind. 380; Dunbar v. Rawles, 28 Ind. 225; Bradshaw v. Warner, 54 Ind. 58; Payne et al v. June et al, 92 Ind. 252; Winchester Wagon Works, etc., v. Carman, 109 Ind. 31, 9 N. E. 707; Baals v. Stewart, 109 Ind. 371, 9 N. E. 403; Andre v. Murray et al, 179 Ind. 576, 101 N. E. 81; Keck etc v. National Cash Register Co., 12 Ind. App. 119, 39 N. E. 899; Fredericks v. Sault, 19 Ind. App. 604, 49 N. E. 909; Hillel v. Bueltner etc. Co., 113 N. E. 12; In re Gilligan, 152 Fed. 605.

How Executed.

A conditional contract of sale must be in writing signed by the vendee but does not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

There is no provision for acknowledgment of a conditional sale contract by the vendee or vendor, nor for proof by a subscribing witness.

Recording or Filing.

There is no provision for recording or filing such a contract, and it is good as to all parties without recording or filing for the term of ten years, except perhaps where the property becomes an irremovable fixture.

Recording Fee.

No fee chargeable as no record is necessary.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

The vendor under conditional contract of sale is entitled to recover the balance unpaid on property destroyed while in the vendee's possession, even though destroyed through no fault of said vendee. Jessup v. Fairbanks, Morse & Co., 38 Ind. App. 673, 78 N. E. 1050.

Fixtures.

It has been held in this state as in many others that unless the property delivered under conditional contract of sale is attached to a building in such a manner that it can be removed without material injury to the building or to itself, or to both, the vendor is entitled to possession where the contract is not complied with. When the article becomes so attached to the building as to become a material part thereof and cannot be re-

moved without great injury to the building or to itself, or to both, it seems a lien for the balance unpaid might be enforced by an action in equity, although this proposition is not definitely settled. Brass Fdry. & Mach. Works v. Gallentine et al, 99 Ind. 525; Binkley v. Forkner et al, 117 Ind. 176, 19 N. E. 753; Ward v. Yarnelle, 173 Ind. 535, 91 N. E. 7; Sears v. Shrout, 24 Ind. App. 313, 56 N. E. 728.

Landlord's Lien.

The owner of a building into which property held under conditional contract of sale is moved does not have a prior lien upon such property for rent of the premises.

Notes.

Notes given under conditional sale contract are presumptive payment only in this state, and such presumption may be rebutted, either by external evidence or by a clause to that effect in the contract itself. Domestic Sewing Machine Co. v. Arthurhultz, 63 Ind. 322; Baals v. Stewart, 109 Ind. 371, 9 N. E. 403; Keck etc. v. National Cash Register Co., 12 Ind. App. 119, 39 N. E. 899; Heyns et al v. Meyer et al, 46 Ind. App. 45, 91 N. E. 973; Orner et al. v. Sattley Mfg. Co., 18 Ind. App. 122, 47 N. E. 644.

Election of Remedies.

The courts have laid down the rule that where the vendor elects to secure a money judgment under the contract, he cannot afterwards take possession of the property, even though his judgment is not paid. Green v. Sinker, Davis & Co., 135 Ind. 434, 35 N. E. 262; Smith v. Barber, 153 Ind. 322, 53 N. E. 1014; Elwood State Bank v. Mock, 40 Ind. App. 685, 82 N. E. 1003.

Repossession and Refund.

Where a conditional sale contract provides that upon default and repossession no refund shall be paid, then such a pro-

vision is enforceable. Shireman v. Jackson, 14 Ind. 459; Singer Sewing Machine Co. v. Phipps, 49 Ind. App. 116, 94 N. E. 793; Quality Clothes Shop v. Keeney, 57 Ind. App. 500, 106 N. E. 541; Hodson v. Warner, 60 Ind. 214; Green v. Sinker Davis Co., 135 Ind. 434, 35 N. E. 262.

Railroad Equipment.

Railroad equipment or rolling stock may be delivered under conditional sale contract or lease with option to purchase. Such contract must be in writing, should be signed by all parties thereto and in order to be valid and effectual as against all purchasers and creditors, must be acknowledged by the vendee or lessee, and be recorded within 60 days after its execution, with the secretary of state. When the vendor is a citizen of Indiana then in addition to the recording hereinbefore required the contract shall be recorded in the county where the vendor resides (presumably with the county recorder). Fees to the secretary of state 10 cents per 100 words. Fees to county recorder 10 cents per 100 words, no charge less than 50 cents.

Each locomotive engine or car so sold or leased shall have the name of the vendor or lessor, or his or its assignee plainly placed or marked on each side thereof, or be otherwise marked so as to indicate the ownership thereof. Such contract is valid for the term of 10 years. Burns Statutes, §§ 5526-5530, 7206, 7327.

Electrical equipment for street railroads may be delivered under conditional sale contract or lease with option to purchase. Such contract must be in writing signed by the parties thereto and in order that same shall be valid and effectual as to all purchasers and creditors it must be acknowledged by the vendee or lessee and be recorded within 30 days after its execution with the county recorder of the county where the street railroad is located and operated. Fees to the county recorder 10 cents for each 100 words, no charge to be less than 50 cents Burns Statutes, §§ 5700-5702, 7327.

IOWA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are recognized by statute law in this state. Code of Iowa §§ 2905, 2906. As amended by Laws 1917, Chap. 154; Crooker Bros. & One v. Brown, 40 Iowa 144; Conable v. Lynch, 45 Iowa 84; Bayliss v. Davis, 47 Iowa 340; In re: Wise, 121 Iowa 359, 96 N. W. 872; Bank of Corning v. Reid, 122 Iowa 280, 98 N. W. 107; Rock Island Plow Co. v. Maynard Savings Bank et al, 123 Iowa 640, 99 N. W. 298; Richards v. Hellen & Son, 153 Ia. 66, 133 N. W. 393; Port Huron Machinery Co. v. Hurto, 154 Iowa 435, 135 N. W. 31; Elijah & Winne v. Mottinger, 161 Iowa 371, 142 N. W. 1038; Parsons Co. v. U. S. Fidelity & G. Co., 225 Fed. 252; U. S. Fidelity etc. Co. v. Parsons Co., 235 Fed. 114; Emerson etc. Co. v. Lawson, 237 Fed. 877.

How Executed.

A conditional contract of sale must be in writing signed by the vendee or vendor, and in order that it may be recorded must be acknowledged by the vendee or vendor in person. It seems advisable to have such contract executed by vendee and vendor so that same may be acknowledged by any party if necessary. Singer Sewing Machine Co. v. Halcomb, 40 Iowa 33; Garr Scott Co. v. Nichols, 115 Iowa 223, 88 N. W. 382; Handlan Buck Mfg. Co. v. Waterloo Drop Forge Co. et al, 173 Iowa 452, 155 N. W. 802.

Acknowledgment or Proof.

A conditional contract of sale is valid as between the parties thereto without any formality in the way of acknowl-

edgment or proof, or filing or recording; but in order to make it valid and to hold title as against any creditor or purchaser of the vendee, in actual possession obtained in pursuance thereof without notice, it is necessary that the contract be filed for record. The perfection of such a contract so that it may be recorded is effected by having same acknowledged by the vendee or vendor. It is not necessary to have it signed or proven by a subscribing witness.

Recording or Filing.

The original contract duly signed and acknowledged by the vendee or vendor must be recorded with the county recorder (who is the register of deeds) in the county where the holder of the property resides. There is no special provision as to time, but the recording should be made before vendee gets possession of the property, if possible. Code of Iowa, §§ 2905, 2906. As amended by Laws 1917, Chapter 154; Warner v. Jameson et al, 52 Iowa 70, 2 N. W. 951; Warner v. Johnson, 65 Iowa 126, 21 N. W. 483; Moline Plow Co. v. Braden, 71 Iowa 141, 32 N. W. 247; Vorse v. Loomis, 86 Iowa 522, 53 N. W. 314; National Cash Register Co. v. Maloney, 95 Iowa 573, 64 N. W. 618.

Recording Fee.

Fee to the recording officer is fifty cents for an instrument of four hundred words or less, and ten cents for each additional one hundred words or part thereof. Code of Iowa, § 498.

Re-Recording or Renewal.

When so recorded such a contract is valid for ten years. There is no provision for re-recording or renewal.

Discharge.

There is no express provision for discharge after payment, but it is always advisable to discharge such a contract after

payment, upon request of the vendee or his assigns. The discharge may be made by recording a written instrument duly acknowledged by the vendor, or by making a notation of discharge upon the margin of the record.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the vendor is entitled to take possession upon non-payment provided the contract has been filed for record.

Where the article has become incorporated into the building so as to become a material part thereof, the vendor would undoubtedly not be permitted to take possession but could enforce his rights in a court of equity against the building itself. Snowden v. Craig & Co., 26 Iowa 156; Hull v. Alexander et al, 26 Iowa 569; Denham v. Sankey et al, 38 Iowa 269; First National Bank v. Elmore, 52 Iowa 541; Miller v. Wilson, 71 Iowa 610; Thomson v. Smith, 111 Iowa 718, 83 N. W. 789; Allis-Chalmers Co. v. City of Atlantic, 164 Iowa 8, 144 N. W. 346; Hoover etc. v. City of Atlantic, 144 N. W. 635.

Notes.

The giving of notes under a conditional sale contract does not ordinarily operate to supersede such a contract. Care should be taken, however, that not too great a portion of the contract itself shall be included in the notes, for under such circumstances it might become necessary to file or record same, and the notes would be made non-negotiable. National Cash Register Co. v. Zangs & One, 127 Iowa 710, 104 N. W. 360.

Election of Remedies.

If the vendor of goods conditionally sold brings action for a money judgment, he is deemed to have waived his lien or title thereby and cannot afterwards replevin the property. Richards et al v. Schreiber et al, 98 Iowa 422, 67 N. W. 569; Gigray v. Mumper, 141 Iowa 396, 118 N. W. 393; Nauman v. Bradshaw, 193 Fed. 350.

Repossession and Refund.

No cases found.

Railroad Equipment.

Conditional sale contracts or leases with option to purchase may be made covering railroad or steam railway equipment or rolling stock, or power house electric, or other equipment of street or interurban railways, or of electric light or power or steam heating companies. Such contracts must be in writing signed by all parties thereto and in order to be valid as against subsequent judgment creditors or subsequent bona fide purchasers for value and without notice, same must be acknowledged by the vendee or lessee in person and must be filed for record with the secretary of state. Each locomotive engine, stationary engine, boiler, switchboard, transformer, motor or other piece of machinery or appliance or car so sold, leased or hired shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner," "lessor" or "bailor" as the case may be. When the contract shall have been paid in full the vendor, lessor, or bailor, or his or its assignee may release same from record by making a declaration to that effect, upon the margin of the record duly attested, or it may be made by a separate instrument acknowledged by the vendor, lessor or bailor or his or its assignee and recorded with the secretary of state. The fees for recording are ten cents per 100 words, no charge to be less than $1.00. Where the declaration of release is made upon the margin of the record, a fee of $1.00 is chargeable. Code of Iowa, § 2051, 2052.

Forms.

ACKNOWLEDGMENT BY INDIVIDUAL.

STATE OF IOWA,
COUNTY OF KEOKUK. } *ss.*

On this 12th day of July, A. D. 1917, before me personally appeared Fred E. Marsh, to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed same as his voluntary act and deed.

HENRY HUTCHINS,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY CORPORATION.

STATE OF IOWA,
COUNTY OF MUSCATINE. } *ss.*

On this 12th day of July A. D., 1917, before me appeared William Parker, to me personally known, who being by me duly sworn (1) did say that he is the President of the Little Falls Furniture Company and that the seal (2) affixed to said instrument is the corporation seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, (3) and said William Parker acknowledged said instrument to be the voluntary act and deed of said corporation.

EARLE H. DORMAN,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

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1. "affirmed" may be substituted if desired.

2. In case the corporation has no corporation seal, omit the words "the seal, etc." and add at the end of the affidavit the words "and that said corporation has no corporation seal."

3. or "Trustees" as the case may be.

Officers Before Whom Acknowledgments May Be Taken.

Within the State. A judge or clerk of any court of record; a county auditor or deputy; a justice of the peace or a notary public within his county or in an adjoining county within which he has filed a certificate of his appointment.

Without the State but Within the United States. A commissioner of deeds appointed by the Governor of Iowa; any notary public with a seal; a judge of any court of record or any officer holding the seal thereof; any justice of the peace or any other officer authorized to take acknowledgments, but in any of these latter cases the official character of the officer acting and the genuineness of his signature must be duly certified under the seal of court by the judge or clerk of a court of record of the county or district in which the acknowledgment is taken. The general form of certificate to be used in such cases is as follows:

CERTIFICATE OF COUNTY CLERK.

STATE OF OHIO,
COUNTY OF CLERMONT. } *ss.*:

I, Edward Eckhart, Clerk of the County Court in and for said County, which court is a court of record having a seal, do hereby certify that Harrison C. Wellman, by and before whom the foregoing acknowledgment was taken, was at the time of taking same a notary public residing in said county and was duly authorized by the laws of said state to take and certify acknowledgments or proofs of deeds of land in said state, and that said conveyance and the acknowledgment thereto are in due form of law; and, further, that I am well acquainted with the handwriting of said Harrison C. Wellman and that I verily

believe that the signature to said certificate of acknowledgment is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Court this 12th day of July A. D. 1917.

Clerk of the County Court of Clermont County.
FRANKLIN MAY,

{SEAL OF COURT}

KANSAS.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. General Statutes Ann. § 6508; Powell v. Wallace, 44 Kas. 656, 25 Pac. 42; Poorman Bros. v. Witman, 49 Kas. 697, 31 Pac. 370; Standard Implement Co. v. Parlin & Orendorff Co., 51 Kas. 544, 33 Pac. 360; McCormick etc. Co. v. Lewis, 52 Kas. 358, 35 Pac. 12; Renoe v. Western Star Milling Co., 53 Kas. 255, 36 Pac. 329; Moline Plow Co. v. Rodgers et al, 53 Kas. 743, 37 Pac. 111; Otto Gas Engine Co. v. Hare et al, 64 Kas. 78, 67 Pac. 444; Van Arsdale v. Peacock and One, 90 Kas. 347, 133 Pac. 703; Big Four Implement Co. v. Wright, 207 Fed. 535.

How Executed.

They must be in writing signed by the vendee, but need not be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. General Statutes Ann. § 6508; Osborne & Co. v. O'Connor et al, 4 Kas. App. 609, 46 Pac. 327.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without further formality in the way of acknowledgment or proof or filing or recording; but in order to make it valid and to

hold title as against innocent purchasers from or creditors of the vendee the contract must be filed. It is not necessary that the instrument should be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed. General Statutes Ann. § 6508.

Recording or Filing.

The original contract duly signed by the vendee or a true copy thereof should be filed, there is no provision for recording. No definite time is prescribed within which such filing must be made, but in order to be valid beyond question as to all persons it should be filed before the vendee gets possession of the property. The filing should be made with the register of deeds for the county where the property is kept. General Statutes Ann. § 6508; Larned National Bank v. Tufts, 53 Kas. 710, 37 Pac. 127.

Recording Fee.

The register of deeds is entitled to a fee of 25 cents for filing such a contract. General Statutes Ann. § 4720.

Re-Recording or Renewal.

Such a contract does not need to be refiled or renewed and is valid for the term of five years. General Statutes Ann. § 6508.

Discharge.

After payment a conditional contract of sale must be discharged from record within 60 days after demand therefor, under penalty of $100.00 fine, and attorney's fees, and such other damages as the evidence in the case will warrant. Fees for filing discharge 25 cents. General Statutes Ann. §§ 4720, 6471, 6502, 6509.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

It is well settled in this state that upon non-payment the vendor has a right to take possession of property conditionally sold and attached to a building, if such property can be removed without material damage to the building or to itself. Eves v. Estes, 10 Kas. 314; Rowand v. Anderson, 33 Kas. 264, 6 Pac. 255; Marshall v. Bacheldor, 47 Kas. 442, 28 Pac. 168; Geppelt et al v. Kansas Middle West Stone Co., 90 Kas. 539, 135 Pac. 573; St. Mary's Machine Co. v. Iola Mill Co., 97 Kas. 464, 155 Pac. 1077; In re: Sunflower State Refining Co., Bank of Commerce etc. v. Carbondale Machine Co., 195 Fed. 180.

Landlord's Lien.

There is no provision of law giving a landlord any lien for rent upon property located on his premises, and he certainly has no rights against property held under conditional contract of sale where that contract was duly filed before the article was moved into his building.

Notes.

Notes may ordinarily be secured under conditional sale contract as they evidence a convenient system of payment, and do not supersede the contract itself. Care should be exercised that not too great a portion of said contract be included in the notes as such a situation makes the notes non-negotiable and may be cause for requiring that same be filed or recorded.

Election of Remedies.

Where the vendor under conditional contract of sale brings an action for money judgment on his contract, this is deemed to be a waiver of his lien upon or title in the property and he cannot afterwards replevin it, even though the judgment is not paid. Moline Plow Co. v. Rodgers et al, 53 Kas. 743, 37 Pac. 111.

Repossession and Refund.

There have been decisions in this state upon various questions concerning repossession and refund, but no definite rule has been laid down that the vendor must repay all or any portion of the money received where he takes the property back on default. Fleck v. Warner, 25 Kas. 492; Hydraulic Press Mfg. Co. v. Whetstone, 63 Kas. 704; 66 Pac. 989; Christie v Scott, 77 Kas. 257; 94 Pac. 214.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be delivered under conditional sale contract or lease with option to purchase, and in order that same shall be valid as to subsequent judgment creditors of, or subsequent bona fide purchasers from vendee, the contract must be in writing signed by all parties thereto, and must be acknowledged by the vendee, lessee, or bailee as the case may be, or be duly proven, after which it must be filed for record with the secretary of state. Each locomotive engine or car so sold, leased or hired shall have the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word "owner," or "lessor" or "bailor" as the case may be. When such a contract shall have been paid in full it may be released by a declaration in writing made on the margin of the record, duly attested, or by a separate instrument duly acknowledged and recorded. The declara-

tion or the release in writing shall be made by the vendor, lessor or bailor or his or its assigns. Fees to the secretary of state are $2.00 for recording the contract or release in writing, and $1.00 for noting the release upon the margin of the record. General Statutes Ann. §§ 8714, 8715.

KENTUCKY.

Legal Status of Conditional Sale Contracts.

Conditional sale contracts are not provided for by statute law in this state, but they are held by the courts to be an absolute sale of the property with a mortgage back. Wicks Bro. v. McConnell, 102 Ky. 434; 43 S. W. 205; In re: Kreuger, 199 Fed. 367.

How Executed.

They must be in writing signed by the vendee but need not be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Baldwin & Co. v. Crow et al, 86 Ky. 679; 7 S. W. 146; Welch v. National Cash Register Co., 19 Ky. L. R. 1664; 44 S. W. 124; Greer v. Church & Co., 13 Bush 430; Hart v. Barney & Smith Mfg. Co., 7 Fed. 543.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against third parties, it should unquestionably be recorded. In order that such a contract may be recorded the vendee must acknowledge same in person, or otherwise it must be signed by two subscribing witnesses, either one of whom may prove the execution of

the contract and the attestation of the other witness. Ky. Statutes, §§ 495, 496, 501.

Recording or Filing.

The original contract duly signed by the vendee must be recorded in order to hold title as against purchasers without notice or creditors. There is no provision for filing.

No express provision exists as to the time within which such a contract must be recorded, but in order to hold title as against all persons and all conditions it should be recorded before vendee gets possession.

If the vendee does not acknowledge the contract in person, two persons must sign the same as subscribing witnesses to his signature, and one of these must swear to its execution to entitle the contract to be recorded. The salesman who secures the order for the vendor may act as one subscribing witness, provided he does not also execute the contract for and on behalf of the vendor. Where such a contract has been signed by two subscribing witnesses to the vendee's signature, and it becomes necessary to record same, the original instrument may be sent to the witness who is friendly to the vendor, who makes oath that he saw same duly signed and executed by the vendee, and that he signed it himself as a witness, and that the other subscribing witness also saw the contract signed and executed by vendee, and likewise signed his name thereto. The instrument may then be recorded.

The statute provides all deeds and mortgages and other instruments of writing, which are required by law to be recorded in order to be effectual against purchasers without notice or creditors shall be recorded in the clerk's office of the court of the county in which the property conveyed or the greater part thereof may be.

Notwithstanding this apparently plain statement, the courts have held that the situs of personal property is the domicile of its owner, and following out this reasoning have de-

clared that no matter where the personal property may actually be located within the state, it is deemed in law to be at the domicile of its owner, and a chattel mortgage or conditional sale contract in order that same may be effectual against purchasers without notice, or creditors, must be recorded in the county where the owner of the property covered thereby has his domicile. In case the owner, chattel mortgagor, or conditional vendor, has no domicile within the state then undoubtedly the recording should be made in the county where the property or the greater part thereof may be located within the state. Ky. Statutes, §§ 495, 496, 501; Baldwin & Co. v. Crow et al, 86 Ky. 679; Coppage v. Johnson, 107 Ky. 620, 55 S. W. 424; Burbank & One v. Babbitt, 157 Ky. 524, 163 S. W. 457; Three Forks Co. et al v. Smith et al, 17 Ky. L. R. 566, 32 S. W. 167; Baldwin & Co. v. Warren et al, 18 Ky. L. R. 1102, 39 S. W. 25; Day & One v. Mack, 24 Ky. L. R. 640, 69 S. W. 712; In re: Ducker, 133 Fed. 771; Affirmed, 134 Fed. 43; In re: Lausman, 183 Fed. 647.

Recording Fee.

The fee for recording such a contract is $1.00 and in addition a tax of fifty cents to the state must be paid on each contract for the sum of more than $200.00. Ky. Statutes, §§ 1720, 4238.

Re-Recording or Renewal.

The contract is valid for the term of fifteen years. There is no provision for re-recording or renewal.

Discharge.

There is no law providing for a discharge of such an instrument after payment. It is, however, always best upon the request of vendee or any other proper parties to discharge such a contract from record after payment in full. Fee for discharging a chattel mortgage twenty-five cents. Ky. Statutes, § 498, 1720.

Criminal Liability of Vendee.

It shall be unlawful for any person having the possession of personal property the title to which is vested in another, to sell or otherwise dispose of such property without the written consent of the person in whom the title is vested. Any person guilty of such offense shall be fined not less than $100.00 or more than $500.00 for each offense. Any person having notice of the manner in which such property is held, who shall purchase it of the person having the possession thereof, or of any other person without the written consent of the person in whom the title is vested, shall be fined not less than $100.00 or more than $1,000.00 for each offense. Ky. Statutes, § 1358 B.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where personal property delivered under conditional sale contract has been attached in a permanent way to real estate same becomes a fixture and cannot be removed, especially if the rights of third parties have intervened. New York Security Co. v. Capital Ry. Co., 77 Fed. 529.

Landlord's Lien.

A landlord has no lien for rent upon property sold under conditional contract of sale, if the contract is made before such property is moved upon his premises. Where, however, the contract is made while the property is located on leased premises the landlord's lien for rent will be prior to such contract. Ky. Statutes, § 2316.

Notes.

No cases found.

Election of Remedies.

The vendor under conditional contract of sale may secure a money judgment and if unable to collect, can thereafter recover his property. Vaughn & Others v. Hopson, 10 Bush 337.

Repossession and Refund.

Where property has been replevined under conditional sale contract after default, vendor must make a fair sale thereof upon notice to the vendee, and return to such vendee the surplus after deducting the balance owing and failure to so act gives vendee an action to recover the money paid in. White Sewing Machine Co. v. Connor, 111 Ky. 827, 64 S. W. 841; Montenegro-Riehm Music Co. v. Beuris, 160 Ky. 557, 169 S. W. 986.

Railroad Equipment.

Railroad equipment or rolling stock may be sold under conditional contract or delivered upon lease with option to purchase. Such a contract must be in writing signed by the parties thereto and the term thereof cannot exceed twenty-five years. In order that same shall be valid as to subsequent purchasers for value and without notice, or against creditors, it must be acknowledged or proven in the same manner as a chattel mortgage, and must be recorded with the secretary of state. When the contract shall have been performed on in full, the vendor or his assignee shall release same, by a written declaration to that effect made upon the margin of the record, attested by the secretary of state, or by recording with said officer a written instrument of release duly acknowledged or proven. On each locomotive or car so sold or leased shall appear the name of the vendor or lessor followed by the word "owner" or "lessor" as the case may be. Ky. Statutes, §§ 2496-2499; Barney & Smith Mfg. Co. v. Hart, 8 Ky. L. R. 223, 1 S. W. 414.

Forms.

PROOF BY SUBSCRIBING WITNESS.

COMMONWEALTH OF KENTUCKY, }
COUNTY OF CRITTENDEN. } *ss.*

Proved by the oath of Eaton De Forest, subscribing witness, to be the act and deed of Edgar Dennis and who also proved the attestation of Henry Smith the other subscribing witness.

EATON DE FOREST,

Subscribed and sworn to before me
this 12th day of July, 1917.

MARTIN GARDNER,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY AN INDIVIDUAL.

COMMONWEALTH OF KENTUCKY, }
COUNTY OF MARSHALL. } *ss.*:

I, Joseph Harkness, a notary public, do certify that this instrument of writing by Marcus Wilkins was this day produced to me by the parties and was acknowledged by the said Marcus Wilkins to be his act and deed and he consented that the same might be recorded.

Given under my hand and seal of office this 12th day of July, 1917.

JOSEPH HARKNESS,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY A CORPORATION.

STATE OF KENTUCKY, }
COUNTY OF MARSHALL. } *ss.*:

Personally appeared before me Wyles R. Dunn, a notary public in and for the county and state aforesaid, Ellis M. Moody, President of The Metal Lath Company, a corporation duly organized and incorporated and existing under and by virtue of the laws of the state of Kentucky, and James T. Metcalf, Secretary of said Corporation, personally known to me, and personally known to me to be such officers and to be the same persons, who executed, as such officers respectively, the within and foregoing instrument of writing and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

Subscribed to in my presence this 12th day of July, A. D., 1917.

ELLIS M. MOODY.
JAMES T. METCALF,

WYLES R. DUNN,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

Officers Before Whom Acknowledgments May Be Taken.

Within the State. County clerks, deputy county clerks, notaries public.

Without the State but Within the United States. Any secretary of state; commissioners of deeds for Kentucky; judges, clerks or deputy clerks of courts under seal of court; mayors of cities; notaries public.

LOUISIANA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state, but the benefit derived is of no special value to a conditional vendor for they are held to be absolute sales, and the security afforded is denominated a vendor's privilege. The laws of this state, however, grant a wide range to such privileges, the object being to insure the seller of personal property the payment of the purchase price. Such privileges, or liens, however, expressly cease to be a protection when the property in question shall have passed from the original purchaser into the hands of a bona fide purchaser for value and without notice; although the privilege affords protection as against an assignment, bankruptcy, attachment or execution, where properly enforced. (See Chattel Mortgage Law). Merrick's Code, §§ 2021, 2043-44, 2471, 3184-86, 3227-3229; Marr's Revised Statutes, §§ 5808-5811; Bulkley & One v. Whited & One, 104 La. 125, 28 So. 922; Adams Machinery Co. v. Newman, 107 La. 702, 32 So. 38; Forsman v. Mace, 111 La. 28, 35 So 372; Frantz Co. v. Winehill Co. et al, 124 La. 680, 50 So. 650; Frantz Co. v. Fink & One, 125 La. 1013, 52 So. 131; Scannell & One v. Beauvais, 38 La. An. 217; Walburn etc. v. Darrell, 49 La. An. 1044, 22 So. 310; Hall etc. v. Hawley, etc., 49 La. An. 1046, 22 So. 205; Patterson v. Bonner, 19 La. (Curry) 508; National Bank of Commerce v. Williams, etc., 159 Fed. 615; Clyde Iron Works v. Frerich, 203 Fed. 637.

How Executed.

Conditional contracts of sale should be in writing, signed by the vendee, but do not need to be signed by vendor. Leases

with option to purchase should be in writing, signed by all parties thereto. This state has a peculiar requirement in that no privilege will be allowed unless the contract shall have become binding in Louisiana. Orders that do not become operative until accepted outside of the state do not carry privilege. There is no direct decision upon this point as regards leases with option to purchase, but as their effectiveness is not founded upon privilege, it is fair to assume they may be accepted anywhere and still be valid.

While the conditional sale contract in this state is valid merely as an absolute sale with vendor's privilege, the owner of movable property may have ample protection as against all third persons, excepting a landlord's lien for rent, until the purchase money is paid in full. Under such circumstances he may deliver his property upon a properly worded lease, with option to purchase. The essential features of such an agreement are that the property must be leased, for a definite period at a definite rental, to be paid at definite times. There must be a provision that at the end of such rental period the property in question will be returned to the lessor, thus completing all the essential elements of a lease. A feature which cannot be incorporated in such an instrument under any circumstances, is an obligation upon the lessee to pay any stated sum, or to do any specific thing, as consideration in the nature of a purchase price, and he cannot be bound in the lease itself to buy the property and pay for it. He can only agree while the lease is in existence that he will pay the rent as consideration for use of the property during the rental term.

It can then be further provided, by a clause in the lease itself, or by a separate instrument, that the lessee for a valid consideration retains to himself an option to purchase said property after the lease terms have been complied with, and to have the rent payments applied upon the purchase price. Merrick's Code, §§ 1765-66, 2441 and 2676; Barber Asphalt Paving Co. v. St. Louis Cyprus Co., 121 La. 152, 46 So. 193; Witt Shoe Co. v. Seegars Co., 122 La. 145, 47 So. 444; Stevens v. Older & One,

26 La. An. 634; McIlvaine & One v. Legare & One, 36 La. An. 359; Claflin & Co. v. Mayer, 41 La. An. 1048, 7 So. 139; Seelig v Dumas, 48 La. An. 1494, 21 So. 91; Succession of Welsh, 111 La. An. 801, 35 So. 913.

Acknowledgment or Proof.

There would seem to be no provision of law by which such a contract covering movable property may be acknowledged or proven, or filed or recorded so as to make it valid as against all third parties.

Recording or Filing.

Where the conditional sale contract covers movable property the filing or recording of such instrument does not seem to be provided for, and such action by a vendor cannot be relied upon to protect his interests as against third parties. A lease with option to purchase does not need to be filed or recorded. Kuhn & Co. v. Embry & One, 35 La. An. 488; Flower & One v. Skipworth, 45 La. An. 895, 13 So. 152.

Recording Fee.

As no recording or filing is provided for, no fee is stated.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

Whosoever shall purchase goods, wares, or merchandise on credit and shall sell, hypothecate, pledge, or otherwise dispose

of same out of the usual course of business, and with intent to cheat and defraud the seller, or vendor, shall be guilty of a misdemeanor, and on conviction thereof shall suffer fine in the discretion of the court, and imprisonment not less than six or more than twelve months. Where the purchase is made for cash and vendee disposes of the property and does not pay the vendor, he shall be punished by fine not exceeding $5,000 or by imprisonment not exceeding five years, or both. Marr's Revised Statutes, §§ 1756, 1758.

Loss, Who Must Bear.

Where property held under conditional sale contract is injured or destroyed while in possession of vendee, he may elect to return same, or may keep and pay for it less the damages. An express contract placing the loss upon vendee would undoubtedly be enforced. Merrick's Code, §§ 2044, 2471.

Fixtures.

The law in this state apparently is that personal property sold on contract, or delivered under lease with option to purchase, does not become a fixture upon real estate, unless the annexation can be said to be irremovable, and even under such circumstances the vendor's privilege may be enforced. Lapene & One v. McCan & Son, 28 La. An. 749; Penn. v. Citizens Bank of La., 32 La. An. 195; Carlin v. Gordy, 32 La. An. 1285; Baldwin v. Young et al, 47 La. An. 1466, 17 So. 883; Swoop v. St. Martin, 110 La. 237, 34 So. 426; Hibernia etc. v. Knoll, etc., 133 La. 242, 62 So. 663; Same Case, 133 La. 697, 63 So. 288; In re: Augusta Sugar Co., 134 La. 971, 64 So. 870; Pratt Engineering Co. etc. v. Cecelia Sugar Co., 135 La. 179, 65 So. 100.

Landlord's Lien.

The laws of this state give a landlord the right to hold personal property found on his premises as security for rent.

Where the property in question is a musical instrument hired for rent the lien does not apply. Merrick's Code, §§ 2705, 3218, Marr's Revised Statutes, § 4124.

Notes.

A note may embody the conditional sale agreement and if transferred by assignment in writing will carry title and vendor's privilege. National Bank of Commerce v. Williams, etc., 159 Fed. 615.

Election of Remedies.

No cases found.

Repossession and Refund.

Many articles of personal property are exempt from seizure under the general law, where the sale is absolute or conditional.

These are chiefly household necessaries (sewing machines and pianos excepted). A lease with option to purchase covering articles which are exempt from seizure under general law is expressly declared to carry a vendor's privilege for its amount. Repossessing such articles without due process of law is a misdemeanor.

Under sales or leases covering ordinary personal property not exempt from general seizure, an agreement may be made for return, but it is never safe to seize such property by trick or force, for the laws of this state would undoubtedly award the vendee or lessee heavy damages under such circumstances. Where there is a dispute action for possession should always be resorted to. Marr's Revised Statutes, §§ 1132, 5808-5811; Van Wren v. Flynn, 34 La. An. 1158; Jenks v. Home Sewing Machine Co., 34 La. An. 1241.

Railroad Equipment.

Contracts for the conditional sale, or leasing with option to purchase, of railroad or street railway equipment or rolling stock, are legal between the parties thereto, but in order that same shall be valid as against any subsequent judgment creditor, or bona fide purchaser for value without notice, same must be signed by all parties thereto, and be duly acknowledged by the vendee, lessee, or bailee, as the case may be, or be duly proven before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved.

Where such lessee, vendee, or bailee is a railroad or railway company, whose line is situated in more than one parish, then the original contract must be filed for record with the recorder of the parish of East Baton Rouge. Where such vendee, lessee or bailee has a line in only one parish, then the contract must be filed for record with the recorder of the parish where such line is situated. Each locomotive, engine or car so sold, leased or hired, or contracted to be so sold, leased or hired, shall have the name of the vendor, lessor or bailor, plainly marked on each side thereof, followed by the word "owner," "lessor" or "bailor" as the case may be. In case of default and retaking all payments shall be forfeited. Where payment in full shall have been received the record may be discharged by a declaration to that effect duly attested, made in the margin of the record by the vendor, lessor or bailor, or his or its assignee, or by separate instrument duly acknowledged by the vendor, lessor, bailor or his or its assignee and duly recorded. Marr's Revised Statutes, §§ 6626-6629.

Chattel Mortgage Law.

The chattel mortgage laws of the several states are not covered by "Haring's Book on Conditional Sales." In certain instances, however, when conditional sale contracts are not recognized by law, where the interests of third parties inter-

vene, it seems proper to advise of the chattel mortgage laws. In Louisiana the use of a lease with option to purchase is recommended, but where the property in question is of the type mentioned hereafter, then a chattel mortgage will be proper security. It shall be lawful to mortgage and hypothecate lumber, logs, live stock and vehicles of all kinds, all kinds of machinery, oil well casing, line pipes, drilling rigs and tanks, for debts or money loaned or to secure future advances by complying with the provisions of this Act. Marr's Revised Statutes, § 4714.

Such mortgage of property mentioned in the above section shall be in writing setting out a full description of said property to be mortgaged so that the same may be identified, and also stating definitely the time when the obligation shall mature, signed by both parties, their lawful agents or attorneys, in the presence of two witnesses, and to affect third persons without notice, said instrument must be passed by notarial act, and deposited forthwith in the office of the recorder of mortgages in the parish where the property shall be then situated, and also in the parish in which the mortgagor is a resident. Marr's Revised Statutes, § 4715.

Upon receipt of such instrument the recorder shall endorse on the back thereof, its number, also the date, hour and minute of receiving same, and shall record it in his office to be kept there for the inspection of all persons interested, and for which he shall receive fifty cents. Marr's Revised Statutes, § 4716.

Every mortgage shall be a lien on the mortgaged property from the time the same is recorded, which recordation shall be notice to all persons of the existence of such mortgage, and said lien shall be superior in rank to any privilege or lien arising subsequently thereto. Marr's Revised Statutes, § 4717.

The mortgagor shall not move said property from the parish where said mortgage is given, without the written consent of the mortgagee, designating the parish or parishes to which same shall be taken and to preserve said mortgage against third

persons in such cases, it shall be the duty of the mortgagee to have a copy thereof recorded in the parish or parishes to which such removal is permitted. Marr's Revised Statutes, § 4718.

For the purposes of this Act, it shall be sufficient for the recorder to keep a book to be known as the Chattel Mortgage Book, which shall be ruled off in columns with headings as follows: "Time of reception," "Name of mortgagor," "Name of mortgagee," "Date of instrument," "Amount secured," "When due," "Property mortgaged," "Remarks." Under the head of "Property mortgaged" it shall be sufficient to enter a general description of the property and the particular place where located. An index to said book shall be kept in the manner as required for other records. Marr's Revised Statutes, § 4719

When any mortgage under this Act shall have been fully paid off or satisfied, it shall be the duty of the mortgagee or beneficiary, his assignee or personal representative to enter satisfaction, or cause satisfaction thereof to be entered of record, under the head of "Remarks" and said recorder shall receive for the same the sum of 25c. Marr's Revised Statutes, § 4720.

Any owner or other person who shall sell or dispose of mortgaged property under this Act with fraudulent intent to defeat said mortgage, or shall remove same from where so mortgaged to another parish without complying with the provisions of this act, or shall remove same out of said parish without the written consent of said mortgagee, shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not exceeding $500 or be imprisoned not exceeding 12 months or both at the discretion of the court. If any mortgagor of movable property or any other who shall injure, destroy, or conceal any mortgaged property, or part thereof, with intent to defraud the mortgagee, his executor, administrator, personal representative or assigns, he shall be deemed guilty of a violation of this Act and upon conviction thereof be punished in the manner above provided. If any mortgagee named in a chattel

mortgage, not being at the time the owner and holder of the debt secured, shall execute a release or satisfaction of said chattel mortgage, he shall be deemed guilty of a violation of this Act and upon conviction he shall be punished as above provided. Marr's Revised Statutes, § 4721.

MAINE.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Revised Statutes 1903, Chap. 113, § 5, as amended by Laws of 1913, Chap. 171; Brown v. Haynes, 52 Me. 578; Allen v. Delano, 55 Me. 113; Small v. Robinson, 69 Me. 425; Rogers v. Whitehouse, 71 Me. 222; Hawkins et al v. Hersey, 86 Me. 394, 30 Atl. 14; Thomas v. Parsons & Others, 87 Me. 203, 32 Atl. 876; White v. Oakes & One, 88 Me. 367, 34 Atl. 175; Robinson v. Berry, 93 Me. 320, 45 Atl. 34; Richardson Mfg. Co. v. Brooks, 95 Me. 146; 49 Atl. 672.

How Executed.

They must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. Bryant v. Crosby, 36 Me. 562; Crocker v. Gullifer et al., 44 Me. 491; Wright v. Fickett, 107 Me. 448, 78 Atl. 576; Pendleton v. Poland, 111 Me. 563, 90 Atl. 126; Guth Piano Co. v. Adams et al., 114 Me. 390; 96 Atl. 722.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or recording or filing, but in order to make it valid and to hold title as against third parties the contract must be recorded. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that

it be signed or proven by a subscribing witness in order to be recorded. Revised Statutes 1903, Chap. 113, § 5, as amended by Laws of 1913, Chap. 171.

Recording or Filing.

The original contract duly signed by the vendee must be recorded. There is no provision for filing. There is no express requirement as to the time within which the contract must be recorded. It should, however, be recorded if possible before the vendee secures possession of the property. The proper recording officer is the clerk of the city, town or plantation, organized for any purpose, in which the purchaser resides at the time of the purchase; but if any of the purchasers are not residents of the state, or reside in an unorganized place in the state, then in the office of the register of deeds, in the county where the seller resides at the time of the sale. Revised Statutes 1903, Chap. 113, § 5, as amended by Laws of 1913, Chap. 171; Waterston v. Getchell, 5 Me. 435 (side paging); Rogers v. Whitehouse, 71 Me. 222; Rowell v. Lewis, 95 Me. 83, 49 Atl. 423; Emerson Co. v. Proctor, 97 Me. 360, 54 Atl. 849.

Recording Fee.

Fee to the recording officer is twenty-five cents where the instrument does not exceed two hundred and fifty words, or fifty cents where the number of words does exceed two hundred and fifty but is not more than five hundred, and fifteen cents for each additional one hundred words or part thereof over five hundred. Revised Statutes, 1903, Chap. 117, § 20.

Re-Recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is no provision for discharge of such a contract after payment. It is always advisable, however, to execute and deliver a written discharge after payment upon request of vendee or other interested party.

Criminal Liability of Vendee.

Whoever knowingly and with intent to defraud, sells, conveys, mortgages or pledges to another, personal property on which there is an existing mortgage, or to which he has no title, without notice to the purchaser of the existence of such mortgage or such lack of title, is guilty of cheating by false pretenses, and upon conviction shall be punished by imprisonment for not more than seven years, or by a fine not exceeding $500.00. Revised Statutes, 1903, Chap. 127, § 1.

Loss, Who Must Bear.

No cases found.

Fixtures.

There has been no general determination by the courts as to the effect of attaching to a building property delivered under conditional sale contract, but it seems safe to say that where the contract has been duly recorded before the property becomes so attached, it could either be taken possession of, or a lien be enforced against the building for the unpaid balance. Hawkins et al v. Hersey, 86 Me. 394.

Landlord's Lien.

There seems to be no express provision giving a landlord a lien for rent on property found on his premises. He certainly would have no lien where the contract was duly recorded be-

fore such property was delivered to the vendee. Revised Statutes, 1903, Chap. 93, §§ 44-45.

Notes.

Where notes have been given under conditional sale contract, and said contract expressly provides that title to the property covered shall not pass until "paid for in money," these notes will not be deemed payment until the money shall have been actually so remitted. Where the contract contains no such provision the notes are presumed to be payment. Anderson Carriage Co. v. Bartley, 102 Me. 492, 67 Atl. 567.

Election of Remedies.

In the State of Maine, under Revised Statutes of 1903, Chapter 113, § 5, there exists the right to sue for the purchase price and the right to foreclose as concurrent or successive remedies. Westinghouse Electric Mfg. Co. v. Auburn & T. R. Co., 106 Me. 349, 76 Atl. 897.

Repossession and Refund.

All such property whether said agreements are recorded or not shall be subject to redemption, and to trustee process, but the title may be foreclosed in the same manner provided for mortgages of personal property Revised Statutes 1903, Chap. 93, §§ 3, 5, 6; Chap. 113, § 5; Chap. 88, § 50.

Railroad Equipment.

Where railroad equipment or rolling stock is sold under conditional contract of sale or is rented with option to purchase, such contract must be signed by all parties thereto and be acknowledged by the vendee, lessee, or bailee as the case may be; after which in order to retain title as against subsequent judgment creditors or subsequent bona fide purchasers for value

and without notice, the original must be recorded in the office of the secretary of state. Each locomotive, engine or car so sold, leased or hired, shall have marked on each side thereof the word "owner," or "lessor" or "bailor," as the case may be. Upon payment or performance in full, the contract may be discharged by a declaration in writing to that effect upon the margin of the record, made by the vendor, lessor or bailor, or his or its assignee duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor or bailor, or his or its assignee and recorded with the secretary of state.

Fees to the secretary of state shall be for recording the contract, or written declaration of satisfaction thereof five dollars.

For noting satisfaction on the margin of the record one dollar. Revised Statutes 1903, Chap. 52, §§ 95-97; Chap. 117, § 17.

MARYLAND.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Laws of Maryland 1916, Chap. 355.

(This statute is so recent that no decisions have been made construing it, and most prior decisions are no longer in force, for which reasons few citations can be given). Dias v. Chickering, 64 Md. 348, 1 Atl. 709; In re: Handy, 218 Fed. 956.

How Executed.

The contract must be in writing signed by the vendee, but does not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto, without any formality in the way of acknowledgment or proof, or filing or recording, and as to all third parties having notice, with the exception of a landlord's lien for rent. In order that it shall be valid and hold title as against such third persons without notice, it is necessary that the contract, or a memorandum thereof be recorded. It would seem that a true copy of such contract may be sent, but it is advised that a memorandum be used, thus reducing the fees to a minimum. No subscribing

witness to or acknowledgment or proof of the contract is required, and the memorandum must be in substantially the following form:

MEMORANDUM OF CONDITIONAL SALE CONTRACT

Notice is hereby given: That .....
of ..... and .....
of .....did on ..... make a contract covering the following described property, to wit:

(Describe Property).

whereby possession thereof is to be delivered to .....
.....and title thereto is to remain in .....
.....until paid for in full. The amount of said contract is $..... upon which remains unpaid and due thereon $ ....., to be paid as follows .....
.....
.....

.....
(Vendor).

Dated at .....

this ..... day of ....., 191....

It is not necessary to make an affidavit as to the consideration expressed in the contract. Laws of 1916, Chap. 355.

Recording or Filing.

There is no provision for filing. The original contract or a true copy thereof, or a memorandum as heretofore stated, must be recorded. The proper recording officer is the circuit court clerk in the county where the property is situated, or if

in the city of Baltimore it must be recorded in the city clerk's office. No definite time is stated within which such record shall be made, but it should be before vendee gets possession if possible. Laws of Maryland 1916, Chap. 355; Public General Laws, Art. 21, §45.

Recording Fee.

Fees to a recording officer are, ten cents for receiving the paper, fifteen cents for indexing and one cent for recording each ten words. Where an acknowledgment is required that the paper has been recorded the fee is usually ten cents, but many officers seek to charge twenty-five cents. Public General Laws, Art 17, § 55, Art. 36, § 12; Peter v. Prettyman, 62 Md. 566.

Re-Recording or Renewal.

There is no provision for re-recording or renewal and the contract is valid for the term of three years.

Discharge.

There is no express provision for discharging such a contract after payment.

Criminal Liability of Vendee.

It is a crime to dispose etc., of property held under unrecorded conditional contract of sale, punishable by imprisonment in jail for not more than six months, or by fine of not more than $500.00, or by both. Public General Laws, Art. 27, § 166.

Loss, Who Must Bear.

No cases found.

Fixtures.

It is a well settled rule in this state that a vendor of property under conditional sale contract may recover possession upon non-payment even though the property be affixed to the building with a great degree of firmness and permanency. Walker v. Schindel, 58 Md. 360; Central Trust Co. v. Arctic Ice Machine Mfg. Co., 77 Md. 202, 26 Atl. 493.

Landlord's Lien.

The laws of this state permit a landlord to levy distress for rent of his premises upon all personal property, not expressly exempt, found thereon, or which has been removed therefrom within 60 days prior or subsequent to the time when the rent has, or will become due. A bona fide purchaser at a sale on execution takes precedence over such distress. The exempt property consists of spinning wheel, loom, sewing machine, typewriter, stove, piano, organ or other musical instrument rented, hired or loaned to the tenant, and every horse, carriage and harness, whip and robe, saddle and bridle not the property of the tenant, in any livery stable, or which may be stored with any keeper of any livery stable, or in any other place, outhouse or barn of the tenant; and all property of any boarder or sojourner at any hotel, tavern, public or private boarding house, and any vehicle not the property of the tenant in any shop for repairs.

A conditional sale contract properly recorded before the property covered thereby is moved upon a landlord's premises, would undoubtedly be a protection. A waiver executed by a landlord for a valid consideration would also prevent the enforcement of a lien. Public General Laws, Art. 53, §§ 8-20; Giles v. Ebsworth & One, 10 Md. 333; Leitch v. Owings, 34 Md. 262; McCreery v. Clafflin et al, 37 Md. 435; Kennedy & One v. Lange, 50 Md. 91; Butler v. Gannon & One, 53 Md. 333; Swartz v. G. B. S. Brewing Co., 109 Md. 393, 71 Atl. 854; McElderry v. Flannagan, 1 H. & G. 308; Ratcliff v. Daniel, 6

H. & J. 498; Cromwell et al v. Owings, 7 H. & J. 55; Howard v. Ramsay, 7 H. & J. 113; Neal v. Clautice, 7 H. & J. 372.

Notes.

No cases found.

Election of Remedies.

No cases found.

Repossession and Refund.

No cases found.

Railroad Equipment.

Railroad equipment may be sold under conditional sale contract, or lease with option to purchase, but in order to be valid as against third parties the contract must be in writing, must be for a term not exceeding twenty years, and must be acknowledged and recorded in the same manner as a deed of real estate, in the office of the clerk of the circuit court for the county where the vendee or lessee has its principal office within the state. Public Gen. Laws, Art. 21, § 87, as amended by Art. 21, Chap. 438 Laws of 1910.

MASSACHUSETTS.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are regulated by statute law, where the property involved becomes thereafter wrought into or attached to real estate in such a manner as to become a fixture. Especially is this true concerning heating apparatus, plumbing goods, and ranges. There are special rules as well governing the sale in this way of furniture and household effects. (See Household Furniture).

As to ordinary personal property the common law rule prevails and same are valid as to all third persons. Revised Laws, Chap. 198, §§ 11-13; Laws of 1912, Chap. 271; Hill v. Freeman, 3 Cush. 257; Tyler v. Freeman, 3 Cush. 261; Heath v. Randall, 4 Cush. 195; Coggill & One v. Hartford etc. R. R. Co., 3 Gray 545; Gilbert v. Thompson, 3 Gray 550; Sargent et al v. Metcalf, 5 Gray 306; Blanchard v. Child, 7 Gray 155; Burbank v. Crooker & One, 7 Gray 158; Deshon v. Bigelow, et al., 8 Gray 159; Farlow v. Ellis & One, 15 Gray 229; Hussey v. Thornton, 4 Mass. 404; Marston v. Baldwin, 17 Mass. 605; Hirschorn v. Canney, 98 Mass. 149; Day v. Bassett, 102 Mass. 445; Carter v. Kingman, 103 Mass. 517; Gilson v. Gwinn, 107 Mass. 126; Benner v. Puffer, 114 Mass. 376; Harrington v. King, 121 Mass. 269; Chase v. Ingalls, 122 Mass. 381; Chase v. Pike, 125 Mass. 117; Newhall & One v. Kingsbury, 131 Mass. 445; Blanchard v. Cooke, 144 Mass. 207, 11 N. E. 83; Spooner v. Cummings, 151 Mass. 313, 23 N. E. 839; Nichols v. Ashton, 155 Mass. 205, 29 N. E. 519; Robinson v. Besarick, 156 Mass. 141, 30 N. E. 553; Robinson v. Bird, 158 Mass. 357, 33 N. E. 391; White v. Solomon, 164 Mass. 516, 42 N. E. 104; Aldrich &

One v. Hodges, 164 Mass. 570, 42 N. E. 107; Cottrell & Sons Co. v. Carter Rice & Co., 173 Mass. 155, 53 N. E. 375; Harding v. Lewenberg, 174 Mass. 394, 54 N. E. 870; Tabbut v. American Insurance Co., 185 Mass. 419, 70 N. E. 430; Pels & Co. v. Millen & One, 192 Mass. 13, 77 N. E. 1152; Dame v. Hanson & Co., 212 Mass. 124, 98 N. E. 589; Bay State Paper Co. v. Duggan, 214 Mass. 166, 100 N. E. 1083; Brown v. Sallinger, 214 Mass. 245, 101 N. E. 382; Sallinger v. Collateral Co., 215 Mass. 266, 102 N. E. 365; Federal Trust Co. v. Bristol Co. St. Ry., 222 Mass. 35, 109 N. E. 880; In re: Harrington, 212 Fed. 542.

How Executed.

As to ordinary personal property, they should be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding agreement as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Where the property is to become attached to real estate all parties should sign. Smith & One v. Aldrich, 180 Mass. 367, 62 N. E. 381.

Acknowledgment or Proof.

There is no provision for acknowledgment of such an instrument by the vendor or vendee, nor for signing or proof by a subscribing witness.

Recording or Filing.

Where the contract covers ordinary personal property which does not thereafter become wrought into, or attached upon real estate in such a manner as to make it a fixture; then no recording or filing is necessary. This is also true as to household furniture. In case the property, and especially heating apparatus, plumbing goods and ranges, does become so

wrought into or attached upon real estate as to make it a fixture, the contract shall be void as against any mortgagee, purchaser, or grantee of said real estate unless within ten days after the making of the contract of conditional sale, same or a memorandum thereof signed by all parties, is recorded in the clerk's office of the city or town in which the real estate is situated. Revised Laws, Chap. 198, §§ 11-13; Laws of 1912, Chap. 271.

Recording Fee.

The laws of Massachusetts do not fix a definite fee for recording conditional sale contracts. The best determination which can be reached from the laws pertaining to fees of city clerks or town clerks leads to the conclusion that the fees should be twenty-five cents for recording the first 224 words, and twenty cents for recording each additional 224 words. Revised Laws, Page 383, Chap. 25, § 95; Revised Laws, Page 1707, Chap. 198, § 3; Revised Laws, Page 1734, Chap. 204, § 29, Amended by Act of 1908, Chap. 365; Revised Laws, Page 1736, Chap. 204, § 35.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

A vendee or lessee of personal property who shall sell, convey or conceal same, before payment in full, is punishable upon conviction by a fine of not more than $100.00, or by imprisonment for not more than one year. Revised Laws, Page 1759, Chap. 208, §§ 70, 73.

Loss, Who Must Bear.

The destruction of property in possession of vendee under conditional sale contract relieves him from further payment if same occurs without his fault. The liability might undoubtedly be shifted by an appropriately worded clause in the contract. Weed v. Boston & Salem Ice Co., 12 Allen 377; Wells v. Calnan, 107 Mass. 514; Swallow v. Emery, 111 Mass. 355.

Fixtures.

In this state as in many others, the question of rights as between a conditional sale vendor, and third parties, where the property involved becomes attached to real estate; has been largely litigated. The earlier decisions made the rule that where such property was fastened to a building no matter in how slight a manner, the vendor lost all rights, and must look to the vendee in person for payment. Later this rule was broadened somewhat, and became the generally accepted regulation for many states, as follows:

Where personal property is attached to a building in such a manner that it may be removed without material injury to itself, or to the building or to both, then vendor may have possession upon default; but where same becomes incorporated into the building or fastened thereto in such a manner that its removal will cause great injury to the building or to the property, or to both, it cannot be taken possession of, and the vendor's remedy would be through an action in equity to have the balance unpaid on the contract declared a lien upon the building itself. Until 1912 no recording or filing of the contract was required, but in that year a law was passed (Chap. 271) making it necessary to record, as against a mortgagee, purchaser, or grantee of such building or real estate. The perplexing question as to what degree of attachment makes it necessary to record is still present. A safe rule to follow would be, that wherever the connection is in any manner permanent, the recording should be attended to.

Fixture, What Is.

Clary v. Owen, 15 Gray 522; Pierce v. George, 108 Mass. 78; Southbridge Sav. Bk. v. Exeter Machine Works, 127 Mass. 542; Smith Co. v. Servin, 130 Mass. 511; Ridgeway Stove Co. v. Way, 141 Mass. 557, 6 N. E. 714; Southbridge Sav. Bk. v. Mason, 147 Mass. 500, 18 N. E. 406; Meagher v. Hayes, 152 Mass. 228, 25 N. E. 105; De La Vergne Refrig. Machine Co. v. Hub Brewing Co. et al, 175 Mass. 419, 56 N. E. 584.

Fixture, What Is Not.

Hanrahan v. O'Reilly, 102 Mass. 201; Maguire v. Park, 140 Mass. 21, 1 N. E. 750; Carpenter v. Walker, 140 Mass. 416, 5 N. E. 160; Wentworth v. Woods Machine Co., 163 Mass. 28, 39 N E. 414; Lorain Steel Co. v. Norwalk etc. Street Ry., 187 Mass. 500, 73 N. E. 646.

Landlord's Lien.

There is no provision of law extending to a landlord, any lien for rent against personal property found upon his premises.

Notes.

The giving of a promissory note in Massachusetts covering a pre-existing debt, is presumed to be payment, but such presumption may be rebutted by competent proof or an express provision to the contrary in the contract. Reed v. Upton, 10 Pick. 522; Sloan v. McCarty, 134 Mass. 245; Bay State Paper Co. v. Duggan, 214 Mass. 166, 100 N. E. 1083; Hoe et al v. Rex 205 Mass. 214, 91 N. E. 154.

Election of Remedies.

Where the vendor of personal property delivered under conditional sale contract having two or more remedies upon default, elects to pursue one of them and secures relief, the others

are deemed abandoned. Ormsby v. Dearborn, 116 Mass. 386; Bailey v. Hervey & One, 135 Mass. 172; Whitney v. Abbott, 191 Mass. 59, 77 N. E. 524; Frisch v. Wells, 200 Mass. 429, 86 N. E. 775; Miller v. Hyde, 161 Mass. 472, 37 N. E. 760; Haynes v. Temple, 198 Mass. 372, 84 N. E. 467.

Repossession and Refund.

There is no provision of law making a refund necessary in this state, where the property is repossessed upon default. There certainly could be no refund collected if the contract expressely stated to the contrary.

When vendor has taken possession upon default, the property must be held fifteen days, during which time vendee has the right of redemption upon paying the full balance with interest, and all lawful charges and expenses. (See Household Furniture). Revised Laws, Page 1708, Chap. 198, § 11; Vincent v. Cornell, 12 Pick. 294; Fairbank v. Phelps, 22 Pick. 535; Hill v. Freeman, 3 Cush. 257; Robinson v. Way, 163 Mass. 212, 39 N. E. 1009; Cottrell & Sons Co. v. Carter Rice Co., 173 Mass. 155, 53 N. E. 375; Hoe et al v. Rex. Mfg. Co., 205 Mass. 214, 91 N. E. 154; Drake v. Metropolitan Mfg. Co., 218 Mass. 112, 105 N. E. 634; Drake v. Metropolitan Mfg. Co., 223 Mass. 314, 111 N. E. 873.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be delivered under conditional sale contract, or lease with option to purchase, but no such contract is valid as against any subsequent attaching creditor, or subsequent bona fide purchaser for value, unless it is in writing executed by the parties thereto, and duly acknowledged by the vendee, lessee or bailee in the same manner as deeds are acknowledged before a magistrate authorized to take acknowledgment of deeds, and is thereafter recorded in the office of the secretary of the commonwealth. Nor is such contract valid as above stated unless each

locomotive, engine or car so sold, leased, hired or contracted for has the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "vendor," "lessor" or "bailor" as the case may be. When payment in full shall have been received a declaration in writing thereof may be made by the vendor, lessor or bailor, or his or its assignee on the margin of the record, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. Fee for recording such contract or declaration is $5.00. Fee for noting declaration of discharge upon the record is $1.00. Revised Laws, Sup. (1902-1906) Page 576, §§ 59-60.

Household Furniture.

If a contract for the sale of personal property is made on condition that the title thereto shall not pass until the purchase money has been fully paid, and the vendor upon default takes from the vendee possession of the property, the vendee may within 15 days after such taking, redeem the property so taken by paying to the vendor the full amount then unpaid with interest and all lawful charges and expenses due to the vendor. Revised Laws, Page 1708, Chap. 198, § 11.

Such contracts for the sale of furniture or other household effects in the form of a lease or otherwise, shall be in writing and a copy thereof shall be furnished to the vendee by the vendor at the time of such sale; and all payments made by or in behalf of the vendee and all charges in the nature of interest or otherwise as they accrue, shall, if the vendee so requests be indorsed by the vendor or his agent upon such copy. A failure of the vendor through negligence to comply with any of the provisions of this section shall suspend his rights under the contract while the failure continues. His refusal or wilful or fraudulent failure so to comply shall be a waiver by him of the conditions of the sale. Revised Laws, Page 1708, Chap. 198, § 12.

Thirty days at least before taking possession of said furniture or effects for default of the vendee the vendor shall demand in writing of the vendee or other person in charge of said furniture or effects the balance then due and shall furnish to said vendee or other person an itemized statement of the account showing the amount due thereon. If said vendee or other person can by the exercise of reasonable care and diligence be found by the vendor, the 15 days during which his right of redemption exists under the provisions of section eleven shall not begin to run until said demand has been made, said statement furnished and said thirty days have expired. If 75% or more of the contract price has been paid by a vendee whose right of redemption has expired, the furniture or effects shall, if the vendee or his legal representative in writing so requests the vendor, be sold by public auction after due advertisement, which shall be published at least three days prior to the sale in one of the principal newspapers if any published in the city or town, otherwise in one of the principal newspapers published in the county, in which the furniture or effects are situated. If the vendor refuses or neglects to make the sale as provided herein the right of redemption shall not be foreclosed. If a balance of the proceeds of the sale remains after deducting the actual expenses of sale by auction and paying from said proceeds to the vendor the balance of the contract price due him, it shall be paid to the vendee or his legal representative. Revised Laws, Pages 1708-9, Chap. 198, § 13; Lee v. Gorham, 165 Mass. 130, 42 N. E. 556; Brown v. Golthwaite Furniture Co., 186 Mass. 51, 71 N. E. 71; Desseau v. Holmes & One, 187 Mass. 486, 73 N. E. 656.

MICHIGAN.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are not provided for by statute as regards ordinary transactions, where the property involved passes from the owner to one who will make use of it himself. Such dealings are, however, firmly established by court decisions. Where the vendee is regularly engaged, or about to engage, in the business of buying and selling such property, or where the articles are railroad equipment, then the statutory requirements must be observed. (See Recording or Filing). Public Acts 1915, § 64; Course v. Tregent, 11 Mich. 65; Whitney v. McConnell, 29 Mich. 12; McMillan v. Larned, 41 Mich. 521, 2 N. W. 662; Winchester v. King, 46 Mich. 102, 8 N. W. 722; Myres v. Maple, 60 Mich. 339, 27 N. W. 536; Edwards v. Symons, 65 Mich. 348, 32 N. W. 796; Hood v. Olin & One, 68 Mich. 165, 36 N. W. 177; Kendrick v. Beard, 81 Mich. 182, 45 N. W. 837; Hovey & One v. Grow, 81 Mich. 314, 45 N. W. 985; Tufts v. D'Arcambal, 85 Mich. 185, 48 N. W. 497; Thrilby et al v. Rainbow, 93 Mich. 164, 53 N. W. 159; Powell v. Eckler, 96 Mich. 538, 56 N. W. 1; Vaughn v. McFadyen, 110 Mich. 234, 68 N. W. 135; Cable Co. v. Wasegizig, 130 Mich. 387, 90 N. W. 24; Oliver Chilled Plow Co. v. Dolan, 139 Mich. 668, 103 N. W. 186; Bunday v. Columbus Machine Company, 143 Mich. 10, 106 N. W. 397; Van Buren v. Stubbins, 149 Mich. 206, 112 N. W. 706; A'Hern v. Lipsett, 154 Mich. 196, 117 N. W. 577; Dearing etc. Co. v. Thompson, 156 Mich. 365, 120 N. W. 801; National Cash Register Co. v. Richards, 159 Mich. 128, 123 N. W. 587; Presque Isle etc. Co. v. Reichel et al., 179 Mich. 466, 146 N. W. 231; Springer et al v. Fuller, 162 N. W. 973.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Dunlap v. Gleason, 15 Mich. 158; National Cash Register Company v. Dehn, 139 Mich. 406, 102 N. W. 965.

Acknowledgment or Proof.

There is no provision for acknowledgment of such an instrument by the vendee or vendor, or for signing or proof by a subscribing witness.

Recording or Filing.

Where the property involved goes directly to the consumer or user, there is no provision for recording or filing, and the contract is valid as to all third parties except where same is attached to a building in such a manner as to become a material part thereof. If, however, the property goes to a person, firm or corporation regularly engaged, or about to engage in the business of buying and selling such property (retailer) with the understanding that same may be resold, then as to all third parties a copy of the contract must be filed with the township or city clerk or recorder of the township or city where the vendee resides, if a resident of the state, or if a non-resident then in a like office where the property is located. No definite time is set for such filing, but it should be done before vendee gets possession if possible. Public Acts 1915, § 64; Compiled Laws, §§ 9523-32; Howell's Michigan Statutes, 11407-11416.

Recording Fee.

The fees for filing such contract, are six cents, and for indexing same to each party thereto, six cents. Compiled Laws, § 9529; Howell's Mich. Statutes, § 11413.

Re-Recording or Renewal.

Ordinary contracts need no refiling and are valid for the term of six years. There is no express provision for refiling contracts made with retailers, and same are valid for a like term. Compiled Laws, § 9728; Howell's Mich. Statutes, § 14135.

Discharge.

A contract which has been filed, must when paid or performed on in full, be discharged. Such discharge may be made by filing a written release with the clerk or recorder, and there is no provision for same being acknowledged; or the vendor, his personal representative, or assignee, may appear before such officer and sign a release on the page of the book where same is indexed. Failure to discharge after payment in full, and 7 days written request given, subjects vendor to a fine of $25.00 and all actual damages.

Fees for discharge, same as for filing. Compiled Laws, §§ 9531-32; Howell's Mich. Statutes, 11415-16.

Criminal Liability of Vendee.

Any person who shall embezzle or fraudulently remove, conceal, or dispose of property held under conditional contract of sale, shall be guilty of a felony where the value of the property is $25.00 or more; and if convicted shall be punished by imprisonment in the state's prison for not more than two years, or by a fine of not more than $250.00, or by imprisonment in the county jail for not more than six months. If the value of the property is less than $25.00, the crime shall be a misdemeanor, punishable by a fine of not more than $100.00 or imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment. Compiled Laws, § 11621; Howell's Mich. Statutes, § 14659.

Loss, Who Must Bear.

Where property has been contracted for under conditional sale agreement and has not been delivered, the loss thereof when it is destroyed by fire, falls upon the vendor. Pierce et al v. Cooley et al, 56 Mich. 552, 23 N. W. 310.

Fixtures.

Property sold under conditional contract of sale, and fastened to a building in such a manner that it can be removed without material injury to the building or itself, can be taken possession of if the contract price is not paid: but where it has become attached to a building in such a manner as to make it a material part thereof, and where it cannot be removed without great injury to the building or to itself, the property cannot be taken possession of, and an action in equity should be brought to enforce a lien against the building itself for the unpaid balance. Knowlton v. Johnson, 37 Mich. 47; Ingersoll v. Barnes, 47 Mich. 104, 10 N. W. 127; Marquette Mfg. Co. v. Jeffery, 49 Mich. 283, 13 N. W. 592; Burrill v. Wilcox Lumber Co., 65 Mich. 571, 32 N. W. 824; Gill v. D'Armant, 90 Mich 425, 51 N. W. 527; Lansing Iron & Engine Works v. Walker, 91 Mich. 409, 51 N. W. 1061; Lansing Iron & Engine Works v. Wilbur, 111 Mich. 413, 69 N. W. 667; Wickes Bros. v. Hill, 115 Mich. 333, 73 N. W. 375.

Landlord's Lien.

There is no provision that a landlord shall have a lien for rent upon personal property found on his premises.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such agreement, and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes, they

may become non-negotiable. Choate v. Stevens, 116 Mich. 28, 74 N. W. 289; Wording Grocery Co. v. Blanding, 161 Mich. 254, 126 N. W. 212; Atkinson v. Japink, 186 Mich. 335, 152 N. W. 1079; Toledo Scale Co. v. Sogo, 186 Mich. 442, 152 N. W. 1046.

Election of Remedies.

Unless a conditional sale contract expressly provides otherwise, the taking of a money judgment will preclude vendor from thereafter retaking the property. Button v. Trader, 75 Mich. 295, 42 N. W. 834; Peninsular General Electric Light Co. v. Norris, 100 Mich. 496, 59 N. W. 151; Fuller et al v. Byrne, 102 Mich. 461, 60 N. W. 980; Pettyplace v. Groton Bridge & Mfg. Co., 103 Mich. 155, 61 N. W. 266; Warner Elevator Mfg. Co. v. Capitol Inv. Co. etc., 127 Mich. 323, 86 N. W. 828.

Repossession and Refund.

Where property covered by a conditional sale contract shall have been retaken upon default, then unless the contract shall so expressly provide, the vendor cannot retain the full amount of payments, but can have only an amount which reasonably reimburses him for use of the property while in vendee's possession, together with actual damages done to it other than usual wear and tear, and in addition he may retain the incidental expenses necessary in regaining possession. Preston v. Whitney, 23 Mich. 260; Johnson v. Whitmore, 27 Mich. 463; Giddy v. Altman, 27 Mich. 206; Whitney v. McConnell, 29 Mich. 12; Deyo v. Jamison, 33 Mich. 94; Smith v. Lozo, 42 Mich. 6, 3 N. W. 227; Adams v. Wood, 51 Mich. 411, 16 N. W. 788; New Home Sewing Machine Co. v. Bothnane, 70 Mich. 443, 38 N. W. 326; Ryan v. Wayson, 108 Mich. 519, 66 N. W. 370; Perkins v. Grobben, 116 Mich. 172, 74 N. W. 469; McBryan v. Universal Elevator Co. et al, 130 Mich. 111, 89 N. W. 683; Woods v. Kaufman, 135 Mich. 5, 97 N. W. 47; Van Den Bosch v. Bouwman, 138 Mich. 624, 101 N. W. 832; Hautala v.

Dover, 176 Mich. 366, 142 N. W. 579; Detroit Trust Co. v. Wormer Machinery Co., 177 Mich. 156, 142 N. W. 1090; Lehnen v. Ryan, 185 Mich. 246, 151 N. W. 655.

Railroad Equipment.

Railroad or street railway equipment, or rolling stock, may be contracted for under conditional sale contract or lease with option to purchase; but in order that same shall be valid as to any subsequent judgment creditor, or any subsequent bona fide purchaser for value, it must be signed by both parties, be acknowledged by the vendee in person, or be proven in the same manner as a deed of real estate and be filed for record with the secretary of state. Each car, engine or other property so sold or leased, must have plainly marked on each side the name of the vendor, lessor or bailor, followed by the word "owner," "lessor," or "bailor" as the case may be. When payment in full shall have been made the record shall be discharged within 30 days thereafter, and a failure in this regard shall be liable to punishment by a fine of not more than $500.00. The discharge may be made by a declaration in writing upon the margin of the index duly attested, or by filing with the secretary of state a declaration of discharge in writing, same being duly acknowledged by the vendor, lessor, or bailor, or his or its assignee.

Fees for filing and indexing the contract or the written discharge $1.00 and the same amount for noting the discharge upon the index. Compiled Laws, §§ 6336-38. Howell's Michigan Statutes, §§ 7037-39. Hogan v. Detroit United Railway, 154 Mich. 478, 118 N. W. 140.

MINNESOTA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. General Statutes 1913, §§ 6981-6997. Thoreson v. Minneapolis H. Works, 29 Minn. 341, 13 N. W. 156; Beer v. Aultman Taylor Co., 32 Minn. 90, 19 N. W. 388; Thomas Mfg. Co. v. Foote, 46 Minn. 240, 48 N. W. 1019; Fitzpatrick v. D. M. Osborn & Co., 50 Minn. 261, 52 N. W. 861; Cortland Wagon Co. v. Sharvy, 52 Minn. 216, 53 N. W. 1147; Wilkinson v. Akeley Lumber Co., 56 Minn. 401, 57 N. W. 941; Hand v. Ryan Drug Co., 63 Minn. 539, 65 N. W. 1081; Babcock Company v. Williams, 75 Minn. 147, 77 N. W. 791; McCormick Harvester Machine Co. v. Belfany, 78 Minn. 370, 81 N. W. 10; Karalis v. Agnew, 111 Minn. 522, 127 N. W. 440; Kimball Co. v. Massey, 126 Minn. 461, 148 N. W. 307; McLoone v. Brusch, 119 Minn. 286, 138 N. W. 35; Skoog v. Mayer Bros. Co., 122 Minn. 209, 142 N. W. 193; French et al v. Yale, 124 Minn. 63, 144 N. W. 451; Norris v. Boston Music Co., 129 Minn. 198, 151 N. W. 971; Dunlop v. Mercer, 156 Fed. 545; Monitor Drill Co. v. Mercer, 163 Fed. 943.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. General Statutes, 1913, § 6981.

Acknowledgment or Proof.

A contract of conditional sale is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid, and to hold title as against creditors of vendee, and subsequent purchasers of such property in good faith, it is necessary that the written contract, or a true copy thereof should be filed. If the contract is oral a memorandum in writing should be filed setting forth the terms and conditions thereof. It is not necessary that the instrument be acknowledged by vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be filed. It is required that the memorandum of an oral contract shall be signed by vendee. General Statutes, 1913, §§ 6981, 6983, 6997.

Recording or Filing.

In order that vendor may be protected as against creditors of vendee and subsequent purchasers of the property in good faith where the contract is in writing the original or a true copy must be filed. While the law sanctions an oral contract it further requires that a memorandum thereof signed by vendee must be filed as against the parties above named. There is no provision for recording in any event.

The filing officer is the register of deeds of the county where the property is situate after delivery. No definite time is set for filing but it should be done before vendee gets possession, if possible. General Statutes of 1913, §§ 6986-6993, as amended by Laws of 1917, Chap. 158. Dyer v. Thorstad, 35 Minn. 534, 29 N. W. 345; Clark v. Richards Co., 68 Minn. 282, 71 N. W. 389; Creamery Package Mfg. Co. v. Tagley & One, 91 Minn. 79, 97 N. W. 412.

Recording Fee.

Fee to the filing officer for services rendered is ten cents General Statutes, 1913, § 6987.

Re-Recording or Renewal.

There is no provision for the renewal of a conditional sale contract, and same is valid for the term of six years after the last payment becomes due. General Statutes, 1913, § 6983.

Discharge.

When payment in full under a conditional sale contract is made the vendor, his representatives, or assigns, shall give duplicate satisfaction thereof, one to the person entitled thereto and the other he shall file at his own expense, with the officer having custody of the instrument so satisfied. Such satisfactions need not be witnessed or acknowledged. The fee for filing same is ten cents. There is no express penalty for failure to furnish such satisfactions, but any person injured could undoubtedly collect his actual damages. General Statutes, 1913, § 6984.

Criminal Liability of Vendee.

None.

Loss, Who Must Bear.

No cases found.

Fixtures.

It has been determined by several decisions that where property held under conditional contract of sale has been attached to a building in such a manner that it may be removed without material damage to the building or to itself, the vendor is entitled to possession. Where the property has been incorporated into a building in such a manner that its removal will cause great injury to the building or to the property itself, it cannot be taken possession of and the vendor must resort to an action in equity to have the balance unpaid under the contract declared a lien against the building. St. Paul Furniture Co. v.

Saur, 63 N. W. 110 (No Minn. Citation); Northwestern Mutual Life Ins. Co. v. George et al, 77 Minn. 319, 79 N. W. 1028.

Landlord's Lien.

There is no provision of law by which a landlord is given a lien for rent upon personal property found on his premises.

Notes.

The giving of notes under conditional sale contract does not ordinarily supersede such agreement, and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes, it may become necessary to record same and the notes are made non-negotiable. Third National Bank v. Armstrong, 25 Minn. 530; Spoon v. Frambach, 83 Minn. 301, 86 N. W. 106; C. W. Raymond Co. v. Kahn, 124 Minn. 426, 145 N. W. 164.

Election of Remedies.

A vendor under conditional sale agreement may have two or more remedies by retaking the property, suing for the purchase price, or foreclosing the common law lien. But whichever one of these shall be exercised, operates as an election, and the others cannot be enforced. Minneapolis Harvester Works v. Rally, 27 Minn. 495, 8 N. W. 597; Aultman & Co. v. Olson etc., 43 Minn. 409, 45 N. W. 852; Keystone Mfg. Co. v. Casselius, 74 Minn. 115, 76 N. W. 1028; Alden v. Dyer & One, 92 Minn. 134, 99 N. W. 784; Chase & Co. v. Kelly, 125 Minn. 317, 146 N. W. 1113.

Repossession and Refund.

Unless the contract provides otherwise, when property has been repossessed for default, the vendee is entitled to recover the amounts paid in, less a reasonable allowance to cover rental and depreciation of the property while in his possession. C. W. Raymond Co. v. Kahn, 124 Minn. 426, 145 N. W. 164.

Railroad Equipment.

Equipment or rolling stock for railroads may be conditionally sold or leased with option to purchase. The contract cannot be for a term of more than ten years and in order that same shall be valid as against purchasers and creditors it must be in writing, signed and acknowledged by vendee, and be filed for record with the secretary of state, and with the register of deeds for the county in which, at the time of execution, the principal office or place of business of the vendee or lessee is situated in the state. Each locomotive engine, or car so sold or leased shall have the name of the vendor or lessor plainly marked on each side, or be otherwise so marked as to indicate the ownership thereof.

There is no provision for discharge, and the fees for filing are not specifically fixed. General Statutes, 1913, §§ 6225-27.

MISSISSIPPI.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute in this state and are included with leases, liens, reservations and remainders. Code of Miss., § 4777. Mount v. Harris, 1 Sm. & M. 185; Ketchum & Cummings v. Brennan, 53 Miss. 596; Le Flore v. Miller et al, 64 Miss. 204, 1 So. 99; Gayden v. Tufts, 68 Miss. 691, 10 So. 53; Journey v. Priestly, 70 Miss. 584, 12 So. 799; Columbus Buggy Co. v. Turley & One, 73 Miss. 529, 19 So. 232; Young v. Salley, 83 Miss. 362, 35 So. 571; Parry Mfg. Co. v. Lowenberg et al, 88 Miss. 532, 41 So. 65; Greenwald & One, 42 So. 89 (No state citation); Watts v. Ainsworth, 89 Miss. 40, 42 So. 672; Fairbanks & Co. v. Graves, 90 Miss. 453, 43 So. 675; Hunter v. Crook, 93 Miss. 812, 47 So. 430; Burkhalter v. Mitchell & One, 107 Miss. 92, 64 So. 967; Broom & Sons v. Dale & Sons, 109 Miss. 52, 67 So. 659.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Code of Mississippi, § 4777. Ham v. Cerniglia, 73 Miss. 290, 18 So. 577; Parker v. Payne, 95 Miss. 375, 48 So. 835.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment, proof, filing or recording. But if the

contract is not recorded, and the vendee transacts business as a trader, or otherwise, with the addition of the words "Agent," "Factor" "and Company," "and Co." or like words and fails to disclose the name of his principal or partner by a sign in letters easy to be read placed conspicuously at the building where such business is transacted; or if the vendee transacts business in his own name without any such additions, the law provides that the property, stock, money, and choses in action used or required in such business shall, as to the creditors of any such person be liable for his debts, and be in all respects treated in favor of his creditors as his property. Code of Mississippi, §§ 4777, 4784.

Recording or Filing.

Within the period of three years from the date when a vendee secures possession of property under a conditional sale contract, such instrument is valid without recording or filing as to all persons excepting creditors of a vendee who shall transact business as a trader or otherwise with the addition of the words "Agent," "Factor," "and Company," "and Co." or like words, and fail to disclose the name of his principal or partner by a sign in letters easy to be read placed conspicuously at the building where such business shall be transacted, or as to creditors of a vendee who shall transact business in his own name without any such additions.

It will be noted that where the vendee is a person other than one who "transacts business," then such a contract will be valid for three years without recording or filing as to all third parties.

It appears to be so difficult under ordinary business conditions for a vendor to distinguish between the circumstances which make recording unnecessary, and those which require it, that it is found advisable to have all contracts recorded.

A contract of conditional sale may be recorded, if signed and acknowledged by the vendee in person, or where signed by the vendee and by one subscribing witness to his signature, and

the said witness has proven same by his oath. This subscribing witness may be the salesman who secures the order, provided he does not also sign the contract for and on behalf of the vendor. The original contract should be recorded with the clerk of chancery court in the county where the property is located. Code of Mississippi, §§ 2784, 2785, 2793, 4777, 4784.

Sign is necessary or record. Gumble v. Coon, 59 Miss. 264; Quin v. Myles, 59 Miss. 375; Wolf & One v. Kahn, 62 Miss. 814; Paine v. Hall Safe and Lock Co., 64 Miss. 175, 1 So. 56; Hamblet et al v. Steen, 65 Miss. 474, 4 So. 431; Adams v. Berg, 67 Miss. 234, 7 So. 225; Quinn v. Mosler Safe Co., (no state citation) 21 So. 303; Merchants & Farmers Bk. v. Schaaf, 108 Miss. 121, 66 So. 402; Gillaspy v. International Harvester of Am., 109 Miss. 136, 67 So. 904; Payne Hardware Co. v. International Harvester of Am., 110 Miss. 783, 70 So. 892.

No sign required: Schoolfield etc. Co. v. Wilkings, 60 Miss. 238; John Van Range Co. v. Allen, (no state citation), 7 So. 499; Gayden v. Tufts, 68 Miss. 691; Harris v. Robson & One, 68 Miss. 506, 9 So. 829; Tufts v. Stone, 70 Miss. 54, 11 So. 792; Jennings v. Wilson, 71 Miss. 42, 13 So. 259; Mask v. Allen (no state citation), 18 So. 82; McKee v. Mitchell et al, 109 Miss. 320, 68 So. 468; Orr v. Jackson Jitney Car Co., 75 So. 945.

Recording Fee.

The fee of the recording officer is ten cents for each one hundred words. Four figures are considered as a word. Code of Mississippi, § 2174.

Re-Recording or Renewal.

Such a contract is valid for the period of six years. There is no provision of law providing for a re-recording or renewal.

Discharge.

There is no provision requiring that a contract of conditional sale shall be discharged from record after payment. It

is, however, always advisable to release same upon proper demand, as any party interested might be able to collect his actual damages resulting from a failure to discharge after demand.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

Where property delivered under conditional sale contract has been injured or destroyed before payment the loss falls on vendee. Burnley v. Tufts, 66 Miss. 48, 5 So. 627; McPherson v. Acme Lbr. Co., 70 Miss. 649, 12 So. 857; Puffer Mfg. Co. v. Dearman, 97 Miss. 622, 54 So. 310.

Fixtures.

It is a well established rule of law in this state that property sold under conditional contract of sale and fastened to a building can, if not paid for, be taken possession of by the vendor, provided the property may be removed without material injury to the building or to itself. If it has been incorporated into the building so that it cannot be removed without great injury, the vendor would undoubtedly have a right of action in equity to charge the balance unpaid as a lien upon the building itself. Duke v. Shackelford, 56 Miss. 552; John Van Range Co. v. Allen, (no state citation), 7 So. 499.

Landlord's Lien.

A landlord's lien in general only applies to agricultural products raised on his land, but the interest of the tenant in other personal property found on the premises may be reached. A distress for rent, however, can only include the vendee's equity in conditionally sold property, whether the contract is recorded or not, where no question of a proper sign upon the

place of business is involved. Code of Mississippi, §§ 2867, 2868. Zimmerman Lbr. Co. v. Elder et al, (no state citation), 29 So. 466; Richardson v. McLaurin, 69 Miss. 71, 12 So. 264; Tufts v. Stone, 70 Miss. 54, 11 So. 792; Ham v. Cerniglia, 73 Miss. 290, 18 So. 577; Paine v. Hall Safe & Lock Co., 64 Miss. 175, 1 So. 56.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such contract, and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes it may become necessary to record same, and the notes are made non-negotiable. McPherson v. Acme Lbr. Co., 70 Miss. 649, 12 So. 857; Ross etc. Fdry Co. v. Pascagaula Ice Co. et al, 72 Miss. 608, 18 So. 364.

Election of Remedies.

When suit is brought for the purchase price under a conditional contract of sale and a judgment is obtained, but not collected, the vendor may afterwards replevin the property. Dederick v. Wolf, 68 Miss. 500, 9 So. 350.

Repossession and Refund.

There seems to be no requirement for a refund upon repossession. Duke v. Shackleford, 50 Miss. 552; McPherson v. Acme Lbr. Co., 70 Miss. 649, 12 So. 857.

Railroad Equipment.

Contract cannot be for more than 15 years but in order that same may be valid for that period as against all purchasers and creditors, same must be acknowledged by the vendee or lessee and be recorded in the office of the clerk of the chancery

court, in which is situated, at the time of execution, thereof, the principal office of the vendee or lessee in the state, or the contract may be recorded with the secretary of state. Each locomotive engine or car so sold or contracted to be sold or leased shall have the name and residence of the vendor or lessor plainly placed or marked on each side thereof, and also the word "vendor" or "lessor" as the case may be, or shall be conspicuously marked so as to indicate such residence and the character of interest therein or shall be otherwise marked so as to indicate the ownership thereof. Code of 1906, §§ 4103-4105. Session Laws, 1910, Chap. 212, page 214.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF MISSISSIPPI, }
COUNTY OF GRENADA. } *ss.*:

Personally appeared before me, the undersigned, a notary public in and for said county and state, Arthur Wright, who is personally known to me, and who having been by me duly sworn, deposes and says that he saw the within named Frank Armstrong, whose name is subscribed to the attached contract, sign and deliver the same on the day and date therein mentioned, and that same was signed by him as a witness thereto, in the presence of said Frank Armstrong.

ARTHUR WRIGHT.

Sworn to and subscribed before me this
12th day of July, 1917.

HENRY P. ADAMS,
Notary Public in and for ————.

{ NOTARIAL SEAL }

ACKNOWLEDGMENT BY AN INDIVIDUAL.

STATE OF MISSISSIPPI, }
COUNTY OF MONROE. } *ss.*:

Personally appeared before me James E. Sherman, a notary public in and for the county and state aforesaid, the within named Morris T. Lathrop, who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand this 12th day of July A. D. 1917.

JAMES E. SHERMAN,
Notary Public in and for ————.

{ NOTARIAL SEAL }

ACKNOWLEDGMENT BY A CORPORATION.

STATE OF MISSISSIPPI, }
COUNTY OF MONROE. } *ss.*:

Personally appeared before me James E. Sherman, a notary public, in and for the county and state aforesaid, Samuel G. Baker who is personally known to me, and who acknowledged that he, the said Samuel G. Baker, as president of and for and on behalf, and by authority of the Liquid Air Company, a corporation organized and existing under the laws of the State of Mississippi, signed the above and foregoing instrument and affixed the corporate seal of said company thereto and delivered said instrument on the day and year therein mentioned.

Given under my hand and seal of office this 12th day of July, A. D. 1917.

JAMES E. SHERMAN,
Notary Public in and for ————.

{ NOTARIAL SEAL }

Officers Before Whom Acknowledgments May Be Taken.

Within the State. A judge of any United States court; a judge of the supreme or circuit courts; a chancellor; a clerk of any court of record; a notary public with seal; a justice of the peace; a mayor of any city, town or village, or a member of the county board of supervisors.

Without the State, but Within the United States. Any judge of the United States supreme, circuit or district court; any judge or justice of the supreme or superior court of any state or territory; any notary public with seal; any clerk of a court of record; any justice of the peace, his official character being certified under seal of some court of record in his county.

MISSOURI.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Ann. Statutes, §§ 3412-13. Robbins v. Phillips, 68 Mo. 100; Peet v. Spencer, 90 Mo. 384, 2 S. W. 434; Hoovens etc. Co. v. Featherstone's Sons et al, 111 Fed. 81; John Deere Plow Co. v. McDavid, 137 Fed. 802; In re: Smith & Nixon Piano Co., 149 Fed. 111.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Sumner v. Cottey, 71 Mo. 121.

Acknowledgment or Proof.

Where such a contract is to be recorded, then the original must be used, and must have been acknowledged by vendee in person or have been proven by a subscribing witness. The original or a copy may be filed, and no acknowledgment or proof is necessary. Ann. Statutes, §§ 906, 3404, 3412-13. Bowser & Co. v. Garwitz, 185 Mo. App. 420, 170 S. W. 927; Musselman v. City of Joplin, (no Mo. App. citation), 180 S. W. 1058.

Recording or Filing.

A conditional sale contract may be either recorded or filed, and there appears to be no advantage in recording. A copy of such contract may be filed, and no acknowledgment or proof or signing by subscribing witness is required. In case the original is recorded same must either have been acknowledged by the vendee in person, or such vendee's signature must have been proven by one subscribing witness.

The recording or filing officer is the register of deeds for the county where the vendee resides, if a resident of the state, or if not such resident, then of the county where the property is situated when the contract is executed. Within the limits of St. Louis, Mo. the recording or filing shall be made with the recorder of deeds for the city.

It will be seen that where the vendee resides without the state of Missouri, and the property covered is without the said state when the contract is made, then the situation is not provided for, and the best compliance which can be made is to file or record in the county where the property may be located after delivery. Where such location is within the city of St. Louis, then file or record with the city recorder of deeds. No definite time is set for filing or recording, but it should be done before vendee secures possession if possible. Ann Statutes, §§ 3404, 3412-13. Collins v. Wilhoit, 108 Mo. 451, 18 S. W. 839; American Clay Machinery Co. v. Sedalia etc. Co., 174 Mo. App. 485, 160 S. W. 902; Twentieth Century Mfg. Co. v. Excelsior Springs etc. Co., (no Mo. App. citation), 171 S. W. 944.

Recording Fee.

Where a contract is recorded the fee is eight cents per one hundred words Where the contract or a copy is filed the fee is ten cents. Ann. Statutes, §§ 3256, 3406.

Re-Recording or Renewal.

The contract is valid for a term of five years, there is no provision for re-recording or renewal. Ann. Statutes, § 3407.

Discharge.

There is no provision for discharge and no penalty for failure to discharge; but it is always advisable upon request of vendee or any other proper party to furnish a discharge.

Criminal Liability of Vendee.

There is no provision making it a crime for vendee to sell, dispose of or mortgage property conditionally sold. The law makes it a crime to sell or dispose of property covered by a chattel mortgage. Ann Statutes, § 1933.

Loss, Who Must Bear.

Where property has been delivered under conditional sale contract and is destroyed before payment in full, the loss falls upon the vendee. Tufts v .Wynn & One, 45 Mo. App. 42.

Fixtures.

Where property delivered under conditional sale contract has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the courts of this state have decided that the vendor is entitled to possession of the property where the contract payments are not made. In case such property has been so attached to a building as to become a material part thereof, and where same cannot be removed without great injury to the building or to itself, then such property cannot be repossessed, but it is probable that a lien for the balance unpaid can be enforced against the building by an action in equity. Wolf Co. v. Hermann etc. Bk., 168 Mo. App. 549, 153 S. W. 1094.

Landlord's Lien.

There is no provision of law giving a landlord any lien for rent upon personal property located on his premises.

Notes.

No cases found.

Election of Remedies.

If the vendor of goods conditionally sold brings action for a money judgment, he is deemed to have waived his lien or title thereby, and cannot afterwards retake the property. The right of foreclosure on a common law lien exists in this state and is a convenient method for securing payment when the balance is not too great. Laclede Power Co. v. Estate of Ennis etc. Co., 79 Mo. App. 302; Wolf Co. v. Hermann etc. Bk., 168 Mo. App. 549, 153 S. W. 1094.

Repossession and Refund.

Where property sold under conditional contract is taken possession of upon default, the vendor shall tender to the vendee the amount received upon the contract after deducting a reasonable sum for use of the property, which cannot exceed twenty-five per cent of the amount received. In addition thereto, if the property is broken or damaged a reasonable allowance shall be made to vendor for such injury. Foreclosure eliminates necessity for refund. Ann. Statutes, § 3413. Gentry v. Templeton, 47 Mo. App. 55; Wurmser v. Sivey, 52 Mo. App. 424; Barnes v. Rawlings, 74 Mo. App. 531; Barnes v. Rawlings, 83 Mo. App. 185; McArthur v. St. Louis Piano Co., 85 Mo. App. 525; Toledo Computing Scale Co. v. Aubuchon, 187 Mo. App. 687, 173 S. W. 85; Hart v. Emerson-Brantingham Co., 203 Fed. 60.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be delivered under conditional sale agreement, or lease with op-

tion to purchase; but in order to be valid and hold title as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value without notice, the contract must be in writing, signed by all parties thereto and be duly acknowledged by vendee, or lessee or bailee, or it may be duly proven by a subscribing witness. The contract shall then be filed for record with the secretary of state. Each locomotive engine or car so sold, leased or hired shall have the name of the vendor, lessor or bailor, as the case may be, plainly marked on each side thereof followed by the word "vendor," "lessor," or "bailor" as the case may be. Such marks shall be effaced immediately upon payment in full and vendor, lessor or bailor shall be chargeable with a penalty of $5.00 per day for each article until the removal is made. Upon payment in full a declaration to that effect shall be recorded with the secretary of state, and notation of discharge shall be made upon the margin of the record.

Fees to the secretary of state are $25.00 for recording an instrument of 1,000 words or less, and $1.00 for each 100 words in excess of 1,000, and he shall receive a fee of $10.00 in addition for noting a discharge upon the record. Ann. Statutes, §§ 1182-1184.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF MISSOURI, }
COUNTY OF NEWTON. } *ss.*

In person before me, the undersigned, comes John Stigler, to me personally known (*) and being by me duly sworn, says

*If witness is not known to officer before whom acknowledgment is taken, his identity may be established by the testimony of two competent parties and the phrase "personally known" would then be replaced by the clause "proven by oath of Richard Fisher of Omaha, Nebraska, and Henry Smith of Farmington, Missouri, to be John Stigler."

he signed the foregoing instrument as a subscribing witness thereto, and the person executing said instrument did sign and deliver same as his act and deed.

JOHN STIGLER.

Subscribed and sworn to before me
this 12th day of July, 1917.

MARCUS SHERWOOD,

Notary Public in and for ————.

{ NOTARIAL SEAL }

My commission expires on the .....day of .....1918.

ACKNOWLEDGMENT BY INDIVIDUAL.

STATE OF MISSOURI, }
COUNTY OF ST. CLAIR. } *ss.*:

On this 12th day of July, 1917, before me personally appeared William O. Allen, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

{ NOTARIAL SEAL }

ARTHUR E. LEWIS,
Notary Public in and for ————.

My commission expires on the .....day of .....1918.

ACKNOWLEDGMENT BY CORPORATION.

STATE OF MISSOURI, }
COUNTY OF DENT. } *ss.*:

On this 12th day of July, 1917, before me personally appeared Morris R. Stone to me personally known, who being by me duly sworn did say that he is president of Mill Supply Company and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation, by authority of its board of directors, and said Morris R. Stone acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

HERBERT Y. LANE,
Notary Public in and for ————.

{ NOTARIAL }
{ SEAL. }

My commission expires on the.....day of.....1918.

Officers Before Whom Acknowledgments May Be Taken.

Within the State. Any judge, justice or clerk of a court having a seal; any notary public; any justice of the peace in his county.

Without the State but Within the United States. Any court of the United States or any state or territorial court having a seal; a clerk of any such court; a commissioner of the state of Missouri; a notary public.

MONTANA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Revised Codes, § 5092 as amended by laws 1911, page 88. Supplement pages 637-8. State ex rel Malin-Yates Co. v. Justice of Peace etc., 51 Mont. 133, 149 Pac. 709.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Miles v. Edsall, 7 Mont. 185, 14 Pac. 701.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against bona fide purchasers, mortgagees or attachment creditors there must be a filing. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that same be signed or proven by a subscribing witness.

Recording or Filing.

No provision is made in this state for recording conditional sale contracts. They may, however, be filed, and in order to

hold title as against bona fide purchasers, mortgagees, or attachment creditors, the original contract duly signed by vendee, or a copy thereof certified by the county clerk and recorder must be filed with the county clerk and recorder of the county wherein the property is situated. There is no express time within which such filing shall be made, but in order to avoid all question same should be done before vendee secures possession of the property. Cuerth v. Arbogast, 48 Mont. 209, 136 Pac. 383.

Recording Fee.

The fee for filing such a contract is fifty cents. Revised Codes, § 5093.

Re-Recording or Renewal.

Such a contract is valid for the term of eight years. There is no provision for refiling or renewal.

Discharge.

Conditional sale contracts must be discharged by the vendor when the purchase price is paid in full, and a failure on his part to cause such discharge and satisfaction within thirty days after payment in full is received, shall render vendor liable for all actual damages sustained by any person by reason thereof. The satisfaction may be procured by a vendor appearing in person before the county clerk or recorder and requesting it, when the fee would be twenty-five cents. Where a written satisfaction piece is filed the fees are fifty cents. Revised Codes, §§ 3168, 5093-5094.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

No cases found.

Landlord's Lien.

There is no express provision of law giving a landlord a lien for rent upon personal property found upon his premises.

Notes.

No cases found.

Election of Remedies.

No cases found.

Repossession and Refund.

A conditional sale vendor may not retake the property in question, credit a valuation thereof upon the contract and sue for the balance. Retaking in this way is a recision and bars an action for the balance of the purchase price. Madison R. Live Stock Co. v. Osler, 39 Mont. 244, 102 Pac. 325.

Railroad Equipment.

Railroad or street railway equipment or rolling stock may be delivered under conditional sale contract or lease with option to purchase, but the term thereof cannot be for a longer period than ten years. Such a contract must be in writing signed by all parties, and in order that same shall be valid as to subsequent bona fide purchasers for value without notice, and subsequent judgment creditors, same must be acknowledged by

the vendee, lessee or bailee, or be duly proven in the same manner as a deed of real estate. It must then be recorded with the secretary of state, and with the county clerk and recorder of the county in which is located the principal office or place of business of the vendee, or lessee, or bailee; also in the office of the county clerk or recorder of each county of the state into which the railroad or street railway extends. Each locomotive engine, or car, so sold, leased or hired, shall have the name of the vendor, lessor or bailor, or assignee of the same, plainly marked on each side thereof followed by the words "owner" or "lessor" or "bailor" as the case may be. Such contract must be released after payment.

Fees to secretary of state for recording contract, or discharge thereof fifteen dollars.

Fees to secretary of state for noting discharge on margin of the record one dollar.

Fees to county clerk or recorder are thirty cents for recording the first folio, and fifteen cents for each subsequent folio. Discharge same as for ordinary contract. Revised Codes, §§ 3168, 4301-4306.

NEBRASKA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Revised Statutes, 1913, § 2636. Cobbey's Ann. Statutes, 1909, § 6045. National Cordage Co. v. Sims, 44 Neb 148, 62 N. W. 514; Osborne Co. v. Plano Mfg. Co., 51 Neb. 502, 70 N. W. 1124; Regier v. Craver et al, 54 Neb. 507, 74 N. W. 830; Starr v. Dow et al, 77 Neb. 172, 108 N. W. 1065; Bradley Co. v. Kingman Co. et al, 79 Neb. 144, 112 N. W. 346; Racine-Sattley Co. v. Hansen et al, 84 Neb. 525, 121 N. W. 573; Thomas v. Field Brundage Co., 215 Fed. 891.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Baker v. Prieve, 59 Neb. 597, 81 N. W. 609; McClelland v. Scroggin, 35 Neb. 536, 53 N. W. 469.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to hold title as against any purchaser or judgment creditor of the vendee or lessee it is necessary that the contract should be filed. It is not necessary that the instrument should be ac-

knowledged by the vendee or the vendor, nor that it be signed or proven by a subscribing witness, but the law requires that to the copy sent for filing shall be attached an affidavit of the vendor, or lessor, or his agent, or attorney, containing the names of the vendor or lessor, and vendee or lessee OR (so in the statute) a description of the property, and the full and true interest of the vendor or lessor therein. Revised Statutes, 1913, § 2636. Cobbey's Ann. Statutes, 1909, § 6045.

Recording or Filing.

In order to retain the vendor's title as against judgment creditors of, or purchasers without notice from, vendee or lessee, the contract must be duly signed by such vendee or lessee and a copy thereof, to which the affidavit heretofore described has been attached, must be filed in the office of the county clerk of the county wherein the vendee resides. There is no definite time provided within which such filing must be made, but in order to avoid all question the filing should be done before vendee secures possession. Revised Statutes, 1913, § 2636. Cobbey's Ann. Statutes, 1909, § 6045. McCormick v. Stevenson, 13 Neb. 70, 12 N. W. 828; Norton et al v. Pilger et al, 30 Neb. 860, 47 N. W. 471; Peterson v. Tufts, 34 Neb. 8, 51 N. W. 297; Campbell Printing Press Co. v. Dyer, 46 Neb. 830, 65 N. W. 904; McCormick etc. Co. v. Callen, 48 Neb. 849, 67 N. W. 863; Racine-Sattley Co. v. Meinen, 79 Neb. 33, 114 N. W. 602.

Recording Fee.

The fee for filing such a contract is twenty-five cents. Revised Statutes, 1913, § 2637. Cobbey's Ann. Statutes, 1909, § 6046.

Re-Recording or Renewal.

Such a contract must be renewed by filing within thirty days before the end of five years from date of original contract,

and within thirty days before the end of each year thereafter a copy of the contract in question together with an affidavit of the same nature as that required when the original filing was made. Revised Statutes, 1913, § 2636. Cobbey's Ann. Statutes, 1909, § 6045. Crancer Co. v. Cooper, 98 Neb. 153, 152 N. W. 304; Same case, 160 N. W. 92.

Discharge.

The courts have held there is no provision requiring discharge of such a contract, and that the penalty provided for failure to discharge a chattel mortgage after payment does not apply. It is always advisable, however, to furnish a discharge to the vendee or any other interested party upon application after payment in full. McCormick Harvester Co. v. Mills, 64 Neb. 166, 89 N. W. 621.

Criminal Liability of Vendee.

No penalty provided.

Loss, Who Must Bear.

Where property delivered under conditional sale agreement shall be destroyed before payment in full, the loss falls upon the vendee. Stickney Co. v. Nicholas, 98 Neb. 287, 152 N. W. 554.

Fixtures.

When property sold under conditional contract of sale has been fastened to a building in such a manner that it can be removed without material injury to the building or to itself, it may be removed by vendor if the contract price is not paid. Where the property has become attached to a building in such a manner as to make it a material part thereof, or so that it cannot be removed without great injury to the building, or to itself,

a lien for the balance unpaid attaches to the building and must be enforced by an action in equity. Arlington Mill Co. v. Yates, 57 Neb. 286, 77 N. W. 677; Edwards etc. Lumber Co. v. Rank, 57 Neb. 323, 77 N. W. 765.

Landlord's Lien.

There is no provision of law giving a landlord any lien for rent upon personal property located on his premises.

Notes.

The giving of notes under a conditional sale agreement does not ordinarily operate to supersede such contract. Care should be taken, however, that not too great a portion of the contract shall be included in the note or that additions be made, for under such cimcumstances it might become necessary to file or record same and the notes would be made non-negotiable. Thompson etc. v. Baldwin, 62 Neb. 530, 87 N. W. 307.

Election of Remedies.

A vendor under conditional sale contract who brings action for a money judgment is deemed to have waived his title in the property and cannot afterwards take possession. Peoples Furniture Co. v. Crosby, 57 Neb. 282, 77 N. W. 658; Frederickson v. Schmittroth, 77 Neb. 722, 112 N. W. 564; Mathews etc. v. Markle, 86 Neb. 123, 124 N. W. 1129.

Repossession and Refund.

Where property is retaken upon default of vendee, and one-third of the entire purchase price has been paid, then such vendor shall at any time within 20 days after the taking, re-deliver same to vendee upon payment by vendee of the balance of the purchase price; together with the reasonable cost of taking and keeping the same. Provided, if vendee shall in the first in-

stance surrender said property to vendor without legal process, no costs shall be chargeable to vendee upon the redemption of said property. Upon refusal of a vendor to re-deliver such property after payment, or tender of the balance of the purchase price thereof and costs if any, the vendee may thereupon recover from vendor all the money paid in on the contract. Revised Statutes, 1913, §§ 545, 546. Cobbey's Ann. Statutes, 1909, §§ 3919, 3920.

Railroad Equipment.

Any instrument for the sale, lease, or hiring of railroad or street railway equipment or rolling stock, retaining title in the seller, or lessor until paid for, shall not be valid as against any subsequent creditor of or bona fide purchaser for value and without notice from, vendee or lessee, unless the contract be in writing signed by all parties thereto, and be duly acknowledged by vendee, lessee, or bailee as the case may be, or be duly proven as deeds are required to be proved. Each such instrument shall be filed for record with the secretary of state, and each locomotive, engine or car so placed shall have the name of the vendor, lessor or bailor, plainly marked on each side thereof followed by the word "owner," "lessor" or "bailor" as the case may be.

The fee for recording is $15.00.

The contract may be discharged after performance by a declaration in writing made by the vendor, lessor or bailor, or his or its assignee. The declaration may be made on the margin of the record, duly attested, or by a separate instrument duly acknowledged and recorded with the secretary of state.

Fees $15.00 for recording such declaration of satisfaction, and $2.00 for noting such declaration upon the margin of the record. Revised Statutes, 1913, §§ 2638, 2639. Cobbey's Ann. Statutes, 1909, §§ 10678, 10679.

Forms.

AFFIDAVIT WHERE VENDOR IS NOT A CORPORATION.

STATE OF NEBRASKA, } ss.:
COUNTY OF CUSTER. }

Charles F. Simmons, being duly sworn, says he is the vendor or lessor, (1) and Hermann Rossea of Omaha, Nebraska, the vendee or lessee of the safe described in copy of contract hereto attached, and the full and true interest of said vendor or lessor in said safe is that of owner.

CHARLES F. SIMMONS.

Subscribed and sworn to before me
this 12th day of July, 1917.

WARREN P. WOOD,
Notary Public in and for ————.

AFFIDAVIT WHERE VENDOR IS A CORPORATION.

STATE OF NEBRASKA, } ss.:
COUNTY OF GREELEY. }

E. Egbert Carroll, being duly sworn, says he is attorney (2) for the Cary Safe Company, a corporation; that said Cary Safe Company is the vendor or lessor, that Harry Jewell of Omaha, Nebraska, is the vendee or lessee of the safe described in

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(1) Or, if such is the case, "the agent or attorney for the vendor or lessor."

(2) Affidavit may be made and signed by any duly authorized officer or agent of the corporation.

copy of contract hereto attached, and the full and true interest of said vendor or lessor in said safe is that of owner.

G. EGBERT CARROLL.

Subscribed and sworn to before me
this 12th day of July, 1917.

GEORGE B. CLARK,
Notary Public in and for ————.

Officers Before Whom Acknowledgments May Be Taken.

Within the State and within the jurisdiction of the officer acting. A judge or clerk of any court; a justice of the peace; a notary public.

Without the State but Within the United States. Any commissioner of deeds for the state of Nebraska or any other officer authorized to take acknowledgments; but if such acknowledgments are taken without the official seal of the officer acting, then (but not otherwise) the authority, regularity and signature of such officer must be certified by the clerk of the court of record or other certifying officer of the county, district or state.

NEVADA.

Legal Status of Conditional Sale Contracts.

There is no provision of statute law governing ordinary conditional sale contracts, but they are recognized by the courts to the fullest extent. Cardinal v. Edwards, 5 Nev. 36; Dillon & West v. Grutt, 38 Nev. 46, 144 Pac. 741.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

There is no provision of law requiring such a contract to be either acknowledged by the vendee or vendor, or to be proven by a subscribing witness.

Recording or Filing.

There is no provision for recording or filing such a contract. It is valid as to all parties without recording or filing for the term of six years.

Recording Fee.

No provision.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

The effect of fastening to a building property sold under conditional contract of sale has not been judicially determined.

Landlord's Lien.

There seems to be no express provision giving a landlord any lien for rent on property found on his premises.

Notes.

No cases found.

Election of Remedies.

There has been no court decision in this state determining whether or not a vendor may bring action for a money judgment on his contract and if unable to collect thereafter replevin the property.

Repossession and Refund.

No cases found.

Railroad Equipment.

Railroad or street railway equipment, or rolling stock, may be delivered under conditional sale contract or lease with option to purchase; but in order for such a contract to be valid as against subsequent judgment creditors, or subsequent bona fide purchasers for value and without notice, same must be in writing signed by all parties thereto; acknowledged by the vendee, lessee or bailee, or proven as deeds are requird to be proven, and filed for record with the secretary of state. Each car or locomotive engine so sold, leased, or hired shall have the name of the vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side thereof followed by the word "owner," "lessor," or "bailor" as the case may be. On payment in full a declaration in writing to that effect shall be made by the vendor, lessor, or bailor or his or its assignee, such declaration shall be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor or his or its assignee, and recorded in the same manner as the contract.

Fees to the secretary of state shall be $5.00 for filing each of such contracts or declarations, and twenty cents per folio (100) words for recording same. Laws of 1913, Chap. 278, §§ 1, 2, 3.

NEW HAMPSHIRE.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Public Statutes and Session Laws, Page 448, Chap. 140, §§ 23-26. Nutting v. Nutting, 63 N. H. 221; Baker v. Tolles, 68 N. H. 73, 36 Atl. 551; Webber v. Osgood, 68 N. H. 234, 38 Atl. 730; Sinclair v. Wheeler, 69 N. H. 538, 45 Atl. 1085; Cutting v. Whittemore, 72 N. H. 107, 54 Atl. 1098; Michelson v. Collins, 72 N. H. 554, 58 Atl. 50.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Gerrish & One v. Clark, 64 N. H. 492, 13 Atl. 870; Hervey v. Dimond, 67 N. H. 342, 39 Atl. 331.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without filing or recording, and also as to all third parties where the agreement is a lease of household furniture containing an option in favor of lessee to purchase the same at a time specified. Any lien reserved on other property is, however, invalid as to attachment creditors, or subsequent purchasers without notice, unless a written memorandum thereof signed by the pur-

chaser is recorded, to which must be attached the affidavit of all parties setting forth the nature of the transaction. No acknowledgment by anyone or proof by subscribing witness is required. Public Statutes and Session Laws, Page 448, Chap. 140, §§ 23-26.

Recording or Filing.

In order to hold title as against attachment creditors or subsequent purchasers without notice, except on household furniture where the instrument is a lease containing an option in favor of the lessee to purchase the same at a specified time, the original contract duly signed by the purchaser, and having attached thereto an affidavit of all parties to the agreement, must be recorded within twenty days after delivery of the property, in the town clerk's office of the town where the purchaser resides, if within the state. If the purchaser is not a resident of the state then it must be recorded in the like office of the town where the vendor resides if within the state, or if both are non-residents, then in the like office of the town where the property is located. There is no provision for signing or proof by subscribing witness, nor for acknowledgment by the purchaser or vendor in person. An affidavit signed and sworn to by the parties must, however, be attached. If the purchaser or vendor is a partnership the affidavit may be made by any partner. Where the purchaser or vendor is a corporation the affidavit may be made by any director thereof, or by any person authorized by the corporation so to do. Public Statutes and Session Laws, Page 446, §§ 6-7, Page 448, §§ 23-26. Adams v. Lee, 64 N. H. 421, 13 Atl. 786; Batchelder v. Sanborn, 66 N. H. 192, 22 Atl. 535; Cleveland Machine Works v. Lang, 67 N. H. 348, 31 Atl. 20; Dorntee Casket Co. v. Gunnison, 69 N. H. 297, 45 Atl. 318; Davis v. Osgood, 69 N. H. 427, 44 Atl. 432; Churchill v. Demeritt, 71 N. H. 110, 51 Atl. 254; Lamb v. King, 73 N. H. 400, 62 Atl. 493; Wood Piano Co. v. Huckins, 75 N. H. 611, 78 Atl. 614.

Recording Fee.

A recording officer is entitled to receive as his fee seventeen cents for recording each page of 224 words. Public Statutes and Session Laws, Page 861, Chap. 287, § 26.

Re-Recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

There is no provision for discharge and no express penalty for failure to make such discharge.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where personal property held under conditional sale contract has been fastened to a building in such a manner that it may be removed without material damage to the building or to the property or to both; then same may be taken away upon default. On the contrary if such property becomes firmly attached to a building and is in a legal sense an integral part thereof, then no removal could be had. Cochran v. Flint, 57 N. H. 514; Tibbetts v. Horne, 65 N. H. 242, 23 Atl. 145.

Landlord's Lien.

No provision.

Notes.

A note form of contract may embody a conditional sale agreement, but under the present laws of New Hampshire, the same must of necessity be recorded. It is always advisable to secure a written conditional sale contract and to follow it with an ordinary promissory note covering the deferred payments. Such a note may refer to the contract but should not contain material portions thereof or additional understandings, for under such circumstances, the note might require recording and it would also be non-negotiable. Esty v. Graham, 46 N. H. 169.

Election of Remedies.

No cases found.

Repossession and Refund.

There seems to be no requirement that any refund shall be made where the property is taken possession of upon default. Davis v. Emery, 11 N. H. 230; Partridge v. Philbrick, 60 N. H. 556; Kimball v. Farnum, 61 N. H. 348.

Railroad Equipment.

Railroad or street railway equipment, or rolling stock may be delivered under conditional sale contract or lease with option to purchase, or any agreement by which a lien thereon is retained to secure the unpaid purchase money. Provided, that no such instrument shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless same be in writing executed by all parties thereto, and duly acknowledged by the vendee, lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved. The instrument must then be recorded with the secretary of state. Each locomotive engine or car so sold, leased or hired as afore-

said, shall have the name of the vendor, lessor or bailor, plainly marked on each side thereof followed by the word "owner," "lessor" or "bailor" as the case may be. When such a contract shall have been performed on in full, a declaration to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee and recorded, as aforesaid.

Fees to the secretary of state for recording are twenty-five cents for each 224 words. Public Statutes and Session Laws, Pages 448-49, Chap. 140, §§ 1, 2, 3. Supplement 1914, Page 328.

Forms.

AFFIDAVIT BY PARTIES.

We severally swear that the foregoing contract, or memorandum, is made for the purpose of witnessing the lien and the sum due thereon as specified in said memorandum, and for no other purpose whatever, and that said lien and sum due thereon were not created for the purpose of enabling the purchaser to execute said memorandum, but said lien is a just lien, and the sum said to be due thereon is honestly due thereon, and owing from the purchaser to the vendor.

SAMUEL D. POND,
ERVIN STEVENS.

STATE OF NEW HAMPSHIRE, }
COUNTY OF ROCKINGHAM. } *ss.*:

On this 12th day of July, 1917, then personally appeared said Samuel D. Pond and Ervin Stevens and each took and subscribed the foregoing oath before me.

TAYLOR PEARSON,
Notary Public in and for ———.

{ NOTARIAL SEAL. }

Officers Before Whom Acknowledgments May Be Taken.

Within or Without the State but Within the United States.
A justice of the peace, notary public, or a commissioner.

NEW JERSEY.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Compiled Statutes, Pages 1561-63, §§ 71-73. General Electric Co. v. Transit Equip. Co., 57 N. J. E. 460; Cooper v. Philadelphia Worsted Co., 68 N. J. E. 622, 60 Atl. 352; Knowles Loom Works v. Vacher, 57 N. J. L. 490, 31 Atl. 306; Claflin Co. v. Elliott Furniture Co., 58 N. J. L. 379, 34 Atl. 259; Woolley v. Geneva Wagon Co., 59 N. J. L. 278, 35 Atl. 789; Palmateer v. Robinson, 60 N. J. L. 433, 38 Atl. 957; Lauter & Co. v. O'Toole, 77 N. J. L. 29, 71 Atl. 288; Lauter & Co. v. Isenreath et al, 77 N. J. L. 323, 72 Atl. 56; National Cash Register Co. v. Daly, 80 N. J. L. 39, 76 Atl. 325; Bartley Co. v. Lee, 87 N. J. L. 19, 93 Atl. 78.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Singer Mfg. Co. v. Wolff Co., 70 N. J. L. 127, 56 Atl. 147.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but will be deemed absolutely void unless recorded, as against judgment creditors of vendee without notice, and subsequent purchasers from and mortgagees of vendee in good faith and with-

out notice, whose deeds and mortgages shall have been first duly recorded.

A subscribing witness to the vendee's signature can swear to the execution of such a contract so as to entitle same to be recorded, and the salesman who secures the order for vendor may act as such subscribing witness, provided he does not also execute the contract for and on behalf of the vendor. The vendee if an individual, or the members of a partnership may acknowledge such a contract in person so that it may be recorded; but a corporation vendee's signature must always be proven by a subscribing witness. Compiled Statutes, Pages 1561-63, §§ 71-73, Page 1540, § 20a, Page 1541, § 21, Pages 1542-3-4, §§ 22, 23, 24, Page 1573, § 114. McAusland et al v. Rieser et al, 82 N. J. E. 614, 90 Atl. 261.

Recording or Filing.

In order to hold title as against the above named third parties the original contract duly signed by vendee must be recorded. There is no provision for filing. The law does not provide a definite time within which same must be recorded, but it will be valid as to judgment creditors if recorded before the judgment is entered, and as to mortgagees if recorded before their mortgages are recorded. It is always advisable to record such a contract before the vendee secures possession when no question can arise.

The recording officer is the clerk of the court of common pleas, who is also county clerk, of the county wherein the vendee resides, if a resident of the state, at the time when such contract is executed, and if not such resident then with the like officer of the county where the property is located when the contract is executed. Where neither of these contingencies exist no record is required. Compiled Statutes, Page 1522, § 22. Behn v. National Bank of New Jersey, 65 N. J. L. 591, 48 Atl. 527; Smith v. Hotel Ritz Company, 74 N. J. E. 296, 70 Atl. 137; Lane v. Roach's Banda Mexicana Co., 78 N. J. E. 439, 79 Atl.

365; Beall v. Hudson County Water Co., 185 Fed. 179; In re: O'Brian, 215 Fed. 129; In re: Vandewater Co., 219 Fed. 627.

Recording Fee.

The several recording officers of this state shall charge for recording all deeds, mortgages, bills of sale, chattel mortgages and all other documents at the following rates: When written in whole ten cents per folio (100 words). When written and printed, or typewritten in whole or in part with type not less than ten (10) point face and with not less than eight (8) point space between the lines, ten cents per folio. When printed or typewritten in whole or in part with type of less than ten (10) point face, with less than eight (8) point space between the lines, in broken measure, tabular, schedule or figure work, twenty cents per folio. Laws of 1915, Chap. 177.

Re-Recording or Renewal.

The contract is valid for the term of six years, there is no provision for re-recording or renewal.

Discharge.

When a conditional sale contract shall have been paid in full, then upon demand of the vendee his assigns or legal representatives, same must be discharged from record. This may be accomplished in either of two ways.

One is to send or present in person to the officer with whom said contract has been recorded, the original instrument, and upon it may be written the words "cancelled by payment in full," signed by vendor, or a receipt in full so signed may be attached to such contract. No acknowledgment or proof is required under such circumstances.

The other method is by sending a certificate stating that the debt has been paid in full, also the volume and page where the

record was made. This instrument must be acknowledged by vendor or be proven by a subscribing witness, in the same manner as the original contract was required to be perfected before it could be recorded.

Fees to the recording officer in either case are fifty cents for making the proper entries.

No express penalty is provided for failure to discharge, but vendee could undoubtedly collect his actual damages. Compiled Statutes, Pages 1562-3, § 73, Page 1566, § 84, Pages 3416-17, §§ 23, 25, 27.

Criminal Liability of Vendee.

Where a vendee with intent to cheat or defraud the owner, shall sell, pledge, pawn, or secrete personal property held under conditional sale contract, such act shall upon conviction constitute a misdemeanor punishable by a fine not to exceed $1,000 or by imprisonment for a term not exceeding three years, or by both such fine and imprisonment. Compiled Statutes, Page 1805, § 206, Page 1812, § 218.

Loss, Who Must Bear.

Where a soda fountain had been delivered under conditional sale contract but its title was retained in vendor until paid for in full, the property was destroyed by fire while a balance remained unpaid and in a suit to recover such amount, it was held that the vendor was entitled to recover. American Soda Fountain Co. v. Vaughn, 69 N. J. L. 582, 55 Atl. 54; American S. F. Co. v. Stolzenbach, 75 N. J. L. 721, 68 Atl. 1078.

Fixtures.

The attaching of personal property, covered by a conditional sale contract, to a building, even though done in a most permanent manner does not constitute same a fixture. Camp-

bell v. Roddy & One, 44 N. J. E. 244, 14 Atl. 279; General Electric Co. v. Transit Equip. Co., 57 N. J. E. 460, 42 Atl. 101; Falaenau v. Reliance Steel Company, 74 N. J. E. 325, 69 Atl. 1098.

Landlord's Lien.

A landlord has a lien for rent in this state upon property found on his premises, but it has been held by the courts that such a lien does not attach to the property covered by conditional contract of sale until the landlord has settled any unpaid balance, and this is true whether the contract has been recorded or otherwise. Compiled Statutes, Pages 1940-42, §§ 6-9. Reischmann v. Masker, 69 N. J. L. 353, 55 Atl. 301.

Notes.

The giving of notes under conditional sale agreement is only a convenient method for evidencing deferred payments, and does not ordinarily supersede such contract. Beall v. Hudson County Water Co., 185 Fed. 179.

Election of Remedies.

In this state a vendor has wide latitude for the securing of a money judgment or taking any other means to collect his debt, after which if payment is not forthcoming he may retake the property. This feature is especially true if the contract so provides. Campbell Mfg. Co. v. Rockaway Pub. Co., 56 N. J. L. 676, 29 Atl. 681.

Repossession and Refund.

There has been no decision in this state making it necessary to refund any portion of moneys received by a vendor. Hallet & Davis Piano Co. v. Roe, 85 N. J. L. 160, 88 Atl. 624.

Railroad Equipment.

A conditional contract of sale, or lease with option to purchase covering railroad or street railway equipment and rolling stock, is not valid, where possession has been delivered, as against subsequent judgment creditors or purchasers for value without notice, unless same be in writing, duly acknowledged as deeds of land are acknowledged, and recorded. Where the vendee or lessee is a corporation operating its road in more than one county within the state, then the record shall be made with the secretary of state. Where the road is operated within a single county then the record shall be made with the recorder of deeds for that county only. Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor or bailor or his or its assignee plainly marked on both sides thereof followed by the word "owner," "lessor," "bailor" or "assignee" as the case may be. Fees to secretary of state, 8 cents per sheet for recording. Compiled Laws, Page 4254, § 80, Page 2278, § 2.

Forms.

ACKNOWLEDGMENT BY AN INDIVIDUAL.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss.*:

On this 12th day of July, 1917, personally appeared before me, Victor Jackson, a master in chancery for the said state and county, Charles C. Curtis, who I am satisfied is the vendee mentioned in the foregoing instrument, and I having first made known to him the contents therein, he acknowledged that he executed the same for the uses and purposes therein mentioned.

VICTOR JACKSON,
Master in Chancery of New Jersey.

(SEAL.)

PROOF BY SUBSCRIBING WITNESS TO INDIVIDUAL SIGNATURE.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*:

I, a notary public in and for said state and county, do hereby certify that on the 12th day of July, 1917, in the county aforesaid, personally appeared Sidney Fuller with whom I am personally acquainted and whom I know to be the subscribing witness to the execution of the foregoing instrument, who, being duly sworn by me, did depose and say that he subscribed his name to the said instrument as the subscribing witness on the day that same bears date, and that Thomas H. Gardner did sign and deliver the instrument as his voluntary act and deed.

In Witness Whereof, I have hereunto affixed my hand and seal this 12th day of July, 1917.

MORRIS B. ERNSHAW,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

PROOF BY SECRETARY OF CORPORATION AS SUBSCRIBING WITNESS.

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } *ss.*:

Be it remembered that on the 12th day of July, 1917, before me a master of the court of chancery of the state of New Jersey personally appeared Willis N. Mead to me known, who being duly sworn according to law on his oath doth depose and say; that he is the secretary of Henderson Mercantile Company, the corporation named in the foregoing contract. That he is well acquainted with the corporate seal of said corpora-

tion, that the seal affixed to said contract is the corporate seal of said corporation, that it was so affixed by order of said corporation; that Henry J. Dowd is the president of the said corporation; that he saw the said Henry J. Dowd, as such president, sign the said contract and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said Henderson Mercantile Company, by their order; and that this deponent signed his name thereto at the same time as a subscribing witness.

WILLIS N. MEAD.

Subscribed and sworn before me the day and year above written.

NEWTON D. HOWELL,
Master in Chancery of New Jersey.

(SEAL.)

PROOF BY WITNESS WHO DOES NOT SIGN AS A WITNESS IN THE ACTUAL PRESENCE OF CORPORATE OFFICER WHO EXECUTES THE CONTRACT.

STATE OF NEW JERSEY, } ss.:
COUNTY OF MERCER. }

I, George N. Mills, a notary public in and for Mercer county do hereby certify that on the 12th day of July, 1917, in the county of Mercer aforesaid, personally appeared John Doe, with whom I am personally acquainted and whom I know to be the subscribing witness to the execution of the foregoing instrument and who, being duly sworn by me, did depose and say that he subscribed his name to the foregoing instrument as a subscribing witness on the day that same bears date, and being well acquainted with the common seal of said Acme Pattern Company knows that same was and is thereto set, and that the said company did then and there sign and deliver the said instrument as its voluntary act and deed.

In Witness Whereof, I have hereunto affixed my hand and seal this 12th day of July, 1917.

GEORGE N. MILLS,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

PROOF BY WITNESS WHO ACTUALLY SIGNS AS SUCH IN THE PRESENCE OF THE CORPORATE OFFICER WHO EXECUTES THE CONTRACT.

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } *ss.*:

Be it remembered that on this 12th day of July in the year 1917, before me, George N. Mills, a notary public in and for Mercer county, personally appeared John Doe to me known, who, being by me duly sworn according to law, doth depose and make proof to my satisfaction that he knows the corporate seal of the Acme Pattern Company named in the foregoing contract; that the seal affixed to said contract is the proper corporate seal of said Company; that Morton D. Hall was at the time of execution of said contract the president of said company and that said contract was signed, sealed and delivered by him as such president in the presence of said deponent, as the voluntary act and deed of said company and that said deponent thereupon subscribed his name as a witness thereto.

All of which I certify.

GEORGE N. MILLS,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

CERTIFICATE OF COUNTY CLERK.

STATE OF NEW YORK, }
COUNTY OF KINGS. } *ss.*:

I, Frederick Lawler, clerk of the county of Kings and clerk of the supreme court in and for said county.

DO HEREBY CERTIFY, That the said court is a court of record; that Harris B. McLain whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a notary public in and for said Kings county duly commissioned and sworn, and qualified to act as such; that as such he was at the time of taking such acknowledgment duly authorized by the laws of the state of New York to take the acknowledgment and proofs of deeds or conveyances for lands, tenements or hereditaments in said state of New York; that I am well acquainted with the handwriting of said Harris B. McLain and verily believe his signature to the same is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at Brooklyn in said county of Kings, this 12th day of July A. D. 1917.

FREDERICK LAWLER,
Clerk, etc.

{ SEAL OF COURT. }

Officers Before Whom Acknowledgments May Be Taken.

Within the State. A chancellor or a justice of the supreme court; any attorney-at-law admitted to practice by the supreme court; a judge or clerk of the court of common pleas in any county; a master in chancery, a notary public, a commissioner of deeds, a surrogate, deputy surrogate, or register of deeds; a county clerk or deputy county clerk.

Without the State but Within the United States. Any judge of the United States supreme circuit or district courts; the chan-

cellor of the state or territory where taken; a judge of the supreme or superior court of the state where taken; the mayor or chief magistrate of cities under the seal of such cities; a master of chancery or a commissioner of deeds of New Jersey; a judge of any court of common pleas or of record, the official character and the authority of such judge and the authenticity of his signature to be certified under the great seal of the state or territory or under the seal of the court of the county in which the acknowledgment is taken; any officer authorized to take acknowledgments of deeds, provided it shall be accompanied by a proper certificate of the acting official's signature and authority.

NEW MEXICO.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. New Mexico Statutes, Appendix Pages 108-109, as Amended by Laws 1917, Chap. 74. Crabtree v. Segrist et al, 3 N. Mex. 278, 6 Pac. 202; Aff'd, 131 U. S. 287.

How Executed.

They must be in writing and should be signed by all parties thereto.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof or filing or recording, but in order to be valid and hold title as against subsequent mortgagees in good faith, purchasers for value without notice, and subsequent general or judgment or attachment creditors without notice, it must be filed or recorded. Same must be acknowledged by the "owner" (so in statute) of the property in order to be so filed or recorded. No determination has been made as to who shall be considered the "owner," but a fair inference leads to the conclusion that vendor may acknowledge the contract. It is possible, however, that the courts may construe the word "owner" to mean the vendee, and a safe rule to follow would be to have the instrument acknowledged by both vendor and vendee, when no question could be raised.

Recording or Filing.

A conditional sale contract may be either recorded or filed and there appears to be no advantage in recording. The officer with whom such recording or filing is made, must be the county clerk of the county wherein the property covered is situate at the time when the contract is executed. If situate in two or more counties, there must be a filing or recording in each. Where the property in question is not within the state when such contract is executed, the statute does not apply directly; but as a measure of protection the filing or recording should take place in the county or counties where such property is located after delivery. A copy may be filed. The original must be recorded. There is no definite time set for such action, but same should be done before vendee gets possession, if possible. New Mexico Statutes, Appendix, Pages 108-109 as Amended by Laws 1917, Chap. 74; McBee v. O'Connel et al, 16 N. Mex. 469, 120 Pac. 734; Vorenberg Co. v. Bosserman, 17 N. Mex. 433, 130 Pac. 438.

Recording Fee.

The fee for filing such a contract is twenty-five cents. Fee for recording is one dollar and fifty cents; where the description of the property is not more than 200 words, and ten cents for each additional 100 words.

Re-Recording or Renewal.

There is no provision for refiling and the contract is valid for the term of six years from its date.

Discharge.

When such contract shall have been paid in full, the vendor, his assignee or personal representative, upon demand of the vendee or his successor in interest, shall acknowledge a satisfaction piece and file same if the contract was filed, or re-

cord same if the contract was recorded in the office or offices where the contract was filed or recorded. Fees, the same as for filing or recording the contract.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

The effect of attaching to a building property held under conditional contract of sale has not been determined by the courts of this state.

Landlord's Lien.

A landlord has a lien on the property of his tenant for rent, but as property delivered under conditional contract of sale is not the property of the tenant, no lien for rent would attach thereto, especially where the contract is filed or recorded before the said property is moved upon the landlord's premises.

Notes.

The giving of notes under conditional sale contract does not ordinarily supersede such contract and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract itself is included in the notes they may become non-negotiable, and require filing or recording.

Election of Remedies.

No cases found.

Repossession and Refund.

No cases found.

Railroad Equipment.

No special statute.

Forms.

ACKNOWLEDGMENT BY INDIVIDUAL.

STATE OF NEW MEXICO, }
COUNTY OF UNION. } *ss.*:

On this 12th day of July, 1917, before me personally appeared Willis E. Strong, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

ALBERT X. AMES,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

My commission expires .....

ACKNOWLEDGMENT BY CORPORATION.

STATE OF NEW MEXICO, }
COUNTY OF SAN JUAN. } *ss.*:

On this 12th day of July, 1917, before me appeared Manley P. Green, to me personally known, who being by me duly sworn did say that he is the president of Overland Telephone Company, a corporation described in the foregoing instrument, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Manley P. Green acknowledged said instrument to be the free act and deed of said corporation.

KENT F. MILLS,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

My commission expires .....

Officers Before Whom Acknowledgments May Be Taken.

Within the State. Clerks of district courts, clerks or judges of probate courts, using the probate seal, a notary public, a justice of the peace.

Without the State but Within the United States. Clerks of courts of record having a seal, commissioners of deeds for New Mexico, notaries public having a seal.

NEW YORK.

ANALYSIS.

A. LEGAL STATUS OF CONDITIONAL SALE CONTRACTS.

Leviable Interest in Vendee None.

Herring v. Hoppock, 15 N. Y. 409.
Hasbrouck v. Lounsbury, 26 N. Y. 598.
Cole v. Mann, 62 N. Y. 1.
Prentiss Tool & Supply Co. v. Schirmer etc., 136 N. Y. 305.
Burchell v. Green, 6 Misc. 236.
National Cash Register Co. v. Coleman, 85 Hun. 125.
Fennikoh v. Gunn, 59 A. D. 132.
Harris v. Gunn, 37 Misc. 796.

Vendee Has No Leviable Interest but Can Sell to Bona Fide Purchaser.

Friedman v. Phillips, 84 A. D. 179.
Powers v. Burdick et al, 126 A. D. 179.
Steiner v. National Cash Register Co., 155 N. Y. S. 447.

Valid as to Vendee's Assignee.

Campbell Prtg. Press Mfg. Co. v. Walker, 114 N. Y. 7.
Brewer v. Ford, 126 N. Y. 643.

Remedies of Vendor on Countermand.

Ackerman v. Rubens, 167 N. Y. 405.
Marvin Safe Co. v. Emanuel et al, 14 N. Y. St. R. 681.
Ideal Cash Register Co. v. Zunino, 39 Misc. 311.
Cambridge Society v. Elliot, 50 Misc. 159.

Innkeeper's Lien has Priority Where Contract not Filed.

Waters & Co. v. Gerard, 189 N. Y. 302.
Leonard v. Harris, 147 A. D. 458.

Valid as to Prior Mortgagee of Real Estate.

Washington Trust Co. v. Morse Iron Works, 106 A. D. 195.

Blanket Contract for Future Deliveries Invalid.

Scherl v. Flam, 129 A. D. 561.

Taking Chattel Mortgage Passes Title.

Gaul v. Goldburg etc. Co., 85 Misc. 426.
McMail v. Michaels, 147 N. Y. S. 516.

B. FORM OF CONTRACT.

Oral Contract Valid.

Tompkins v. Fonda Glove Lining Co., 188 N. Y. 261.
Alexander v. Kellener, 131 A. D. 809.
Herbert v. Humphreys et al, 66 Misc. 150.

Lease with Option to Purchase is Conditional Sale Contract.

Gardner v. Town of Cameron, 155 A. D. 750.
Affirmed, 215 N. Y. 682.
Grey v. Booth, 64 A. D. 231.
Hoffman v. White Sewing Machine Co., 123 A. D. 166.
People ex rel Buffalo Steam Roller Co. v. Laidlaw, 155 A. D. 759.
Campbell etc. v. Oltrogge, 13 Daly 247.
Weiss v. Leichter, 133 N. Y. S. 999.

Lease with Option in Separate Instrument not Conditional Sale Contract.

Cutler Mail Chute Co. v. Crawford, 167 A. D. 246.

Contract with Option to Purchase May Be a Lease.

Singer Sewing Machine Co. v. Independent W. B. Mfg. Co., 141 N. Y. S. 488.

C. HOW EXECUTED.

D. ACKNOWLEDGMENT OR PROOF.

E. RECORDING OR FILING.

Filing Where Property is not Attached or to be Attached to a Building.

Filing Where Property is Attached or to be Attached to a Building.

When Filing Not Necessary.

Herring v. Hoppock, 15 N. Y. 409.
Cole v. Mann, 61 N. Y. 1.
Prentiss Tool & Supply Co. v. Schirmer etc., 136 N. Y. 305.

When Filing Necessary.

Waters & Co. v. Gerard, 189 N. Y. 302.

Must Be Filed Forthwith.

Karst v. Gane et al, 136 N. Y. 316.
Stephens v. Perrine et al, 143 N. Y. 476.
Stephens v. Meriden et al, 160 N. Y. 178.
Vreeland v. Pratt, 42 N. Y. St. R. 582.
Bullard v. Kenyon, 53 N. Y. St. R. 731.
Seger & Gross Co. v. Maclaire, 165 N. Y. S. 423.
Levy v. Horn, 153 N. Y. S. 913.

Notice Obviates Filing.

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Refiling Where Property is Attached or to be Attached to a Building.

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Suit for Purchase Price not an Election.

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Fairbanks v. Nichols & Others, 135 A. D. 298.
Leonard v. Montague, 155 A. D. 506.
Bochen v. Multicolor Sales Co. Inc., 163 N. Y. S. 202.
Cee Bee Cee etc. Co. v. Borenstein, 164 N. Y. S. 703.
Nyboe v. Doll & Sons, 167 A. D. 225.

When Demand not Necessary before Repossession.

Gibbons v. Luke, 37 Hun. 576.

When Demand Necessary before Repossession.

Cunningham v. Hedge, 12 A. D. 212.

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Hoffman v. White Sewing Machine Co., 123 A. D. 166.

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Rindone v. Hamlin's Inc., 161 N. Y. S. 858.
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Equitable General Providing Co. v. Potter, 22 Misc. 124.
Equitable General Providing Co. v. Eisentrager, 34 Misc. 179.
National Cash Register Co. v. Coleman, 85 Hun. 125.

When Vendee Gives Chattel Mortgage after Conditional Sale Contract, no Refund is Payable after Repossession.

Gaul v. Goldburg etc. Co., 147 N. Y. S. 516.

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U. RAILROAD EQUIPMENT.

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V. ESTOPPLE.

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NEW YORK.

A. LEGAL STATUS OF CONDITIONAL SALE CONTRACTS.

Conditional contracts of sale are provided for by statute law in this state, and they are divided into three classes: Those covering property attached or to be attached to a building; those covering property not attached or to be attached to a building, and those covering railroad equipment. Consolidated Laws, Vol. 4 Personal Property Law, §§ 60-67, as amended by Chapters 14 and 455, Laws of 1915, Sup. Vol. 10, Consolidated Laws, Pages 529-531.

Leviable Interest in Vendee None.

Where an iron safe had been delivered in New York under conditional sale contract which was never paid in full, judgments were secured against the vendee, by two of its creditors and the safe was levied upon by the sheriff. The sheriff was notified of the original vendor's title or lien upon the safe under the contract, and he then required an indemnity bond before he would sell. This bond was given and the safe was sold. The original vendor afterwards brought action upon the bond to recover damages.

Held: Such recovery could be had as the vendee under a conditional sale contract has no leviable interest in such property before the purchase price has been paid in full. There was no mention in this case of the contract ever having been filed for record. (Recording or filing, see New York, E.). Herring v. Hoppock, 15 N. Y. 409.

Where a horse had been sold under conditional sale agreement and not paid for, a creditor of the vendee secured a judgment and levied upon the horse, after which, under such execution, the horse was sold and the judgment creditor purchased it. It then seems the original vendee brought action against such judgment creditor and purchaser at the sale, to recover the value of the horse, and secured a judgment therefor which was paid. All these transactions took place before the date arrived upon which the original vendee was to have paid the original vendor for the horse. Such payment not being made the original vendor sued the third person who had purchased at the sheriff's sale, and who had later on paid the value of the horse to the original vendee, and a judgment was recovered against him for the value of said horse with costs. Upon appeal it was held, that he had secured no right or title in the said horse, under the execution and sale, nor by paying the vendee and that the original vendor could recover its value. Hasbrouck v. Lounsbury, 26 N. Y. 598.

A conditional sale contract of property not attached or to be attached to a building, is valid as against general creditors, also judgment or attachment creditors of the vendee, and his trustee in bankruptcy without filing, for only subsequent purchasers, pledgees or mortgagees in good faith are named by the statute as against whom it shall be void, unless filed. (Recording or filing, see New York, E.). (Retailer, see New York, O.). Cole v. Mann, 62 N. Y. 1.

Machinery was sold and delivered in New York under conditional contract of sale and a copy of such contract was filed. Thereafter a judgment was secured against the vendee and upon execution issued, under such judgment, the sheriff levied upon these machines which had not been paid for. The original vendor brought action of conversion against the sheriff, and the point was raised that such contract had not been properly filed, and was therefore no notice to the sheriff representing an execution creditor.

Held: That no filing whatever of such a contract was necessary as against an execution creditor, or the sheriff who had made a levy under such execution. Along with this machinery when it was originally sold, under the conditional sale contract was a quantity of brass. The title to such brass was retained in the vendor, but vendee was given the right to use same in its manufacturing processes. The proceeds of such manufactured brass, when sold was to be paid over to the vendor, and it was so paid before the execution was levied. It was held that this right given to manufacture brass and sell it did not effect the conditional sale contract. Under all the facts it was held that the original vendor could recover from the sheriff. (Recording or filing, see New York, E.). (Retailer, see New York, O.). Prentiss Tool & Supply Co. v. Schirmer etc., 136 N. Y. 305, 32 N. E. 849.

Where the purchaser of personal property paid a part of the price and gave a note for the balance, with a clause therein, providing that title to said property should remain in the seller until paid for, and such note was not filed; the property was levied upon by a judgment creditor of the said vendee. In an action to recover same it was held, the vendee had no leviable interest in the said property. Burchell v. Green, 6 Misc. 236, Affd. 80 Hun. 602.

Under a conditional sale contract a cash register was delivered in New York. The contract provided that upon default in making any payments, vendor might take possession of and remove the property, and the balance of the purchase price should at once become due and payable. Upon default vendor repossessed the property and sued vendee for the balance unpaid on the purchase price. Judgment was secured and execution issued and returned wholly unsatisfied. Proceedings supplementary to execution were started by the vendor and at this stage the vendee, the judgment debtor, moved at special term to set aside a return of the execution upon the ground that said vendee had a leviable interest in the register which should have been levied upon by the sheriff. The return of the execu-

tion was set aside, but upon appeal such order was reversed upon the ground, that a vendee under conditional sale contract has no leviable interest in the property before payment in full, and it was stated that as vendor still held the register, the action brought to recover the balance of the purchase price was proper, it being assumed that upon collection of such judgment the register would be turned over to the vendee. (Election of Remedies, see New York, P.). (Repossession, see New York, S.). National Cash Register Co. v. Coleman, 85 Hun. 125, 32 N. Y. S. 593; Same effect, Fennikoh v. Gunn, (discussed in New York, O.), 59 A. D. 132; See, Harris v. Gunn, 37 Misc. 796, 77 N. Y. S. 20.

Vendee Has no Leviable Interest but Can Sell to Bona Fide Purchaser.

Where a piano had been sold under conditional sale contract retaining all title in vendor until paid for, the vendee made all payments promptly, and when she owed about $50.00 on a contract which had been $225.00 a judgment by another creditor was secured against her and execution issued upon it, and the piano was sold thereunder, and purchased at such sale by the execution creditor. The original vendor of such piano seems to have taken no action against anyone. The vendee, evidently after the suit above described had been started, executed a mortgage upon her interest in the piano to a third person, and later after the sale of such piano under execution, she sold outright to the same third person all her rights in the said piano. Thereafter this third person brought action against the party who had purchased at the execution sale, such action being in conversion for the value of the piano.

Held: A recovery could be had, as a vendee under conditional sale contract in New York has an interest which can be bought, but that such a vendee has no interest in the property which can be levied upon under execution. This situation arising because of the peculiar wording of the New York

statute. Friedman v. Phillips, 84 A. D. 179, 82 N. Y. S. 96; Powers v. Burdick et al (discussed in New York, S.), 126 A. D. 179; Steiner v. National Cash Register Co. (discussed in New York, S.), 155 N. Y. S. 447.

Valid as to Vendee's Assignee.

Campbell Prtg. Press Mfg. Co. v. Walker, (discussed in New York, N.), 114 N. Y. 7; Brewer v. Ford (discussed in New York, N.), 126 N. Y. 643.

Remedies of Vendor on Countermand.

The owner of a yacht in New York City sold it under conditional sale agreement for a stated sum. Vendee refused to complete his purchase and never took possession of the property. Vendor thereafter notified him to the effect that the contract as made would be enforced; that he would hold the yacht for the vendee, and would attempt to sell it for the most favorable price that could be secured, and if this price did not clear the contract price, would hold him for the deficiency. The yacht was advertised for two months each Sunday in a paper published in New York, but no sale was secured. Therefore said yacht was placed in the hands of a licensed auctioneer to be sold, which said auctioneer advertised the sale of it (it does not state in what manner). A place was stated at which prospective buyers could see the yacht, and a time and place was set, complying with such notice, when the yacht was sold to the original vendor, after there had been other bids by a stranger. The amount received was slightly less than one-half the original contract price, from which was deducted the expenses of advertising and sale, including the auctioneer's fee. Vendor then sued vendee to recover the difference between this balance and the contract price. These rules were laid down. When the vendee of personal property under an executory contract of sale refuses to complete his purchase, the vendor may keep the articles for him and sue for the entire pur-

chase price, or he may keep the property as his own, and sue for the difference between the market value and the contract price, or he may sell the property for the highest sum he can get, and after crediting the net amount received, sue for the balance of the purchase money. It was held in this instance, that the vendor was entitled to recover the amount for which he had sued. There was a dissenting opinion by Mr. Justice Haight, upon the ground that the vendor could not sell to himself at an auction so conducted, but the prevailing opinion expressly declared that such a method of sale is permissable, especially where the amount bid is reasonable, considering the value of the property, and there has been no fraud or collusion in the proceeding. (Measure of Damages, see New York, R.). Ackerman v. Rubens, 167 N. Y. 405, 67 N. E. 750.

Where an iron safe had been contracted for on the basis that title thereto should not pass until said safe was paid for in full, and the payments were to be made in installments; the vendee refused to accept delivery and vendor sued for the full purchase price, which it was permitted to recover. Marvin Safe Co. v. Emanuel et al, 14 N. Y. St. R. 681, 21 Abb. N. C. 181.

A conditional sale contract for two cash registers was made in New York, and they were thereafter tendered to the vendee who refused to accept and pay for same. Vendor then kept the registers in its possession being ready at all times to make delivery, and sued vendee for the full purchase price.

Held: Recovery could be had. The rule was stated. The vendor of personal property has three remedies against the vendee in default, where there has been neither delivery nor acceptance. He may store the property for the buyer and sue for the purchase price; or may sell the property as agent for the vendee and recover the difference resulting; or may keep the property as his own and recover the difference between the value of said property and the contract price at the time and place of delivery tendered. Ideal Cash Register Co. v. Zunino, 39 Misc. 311, 79 N. Y. S. 504.

A person who agrees to buy personal property and pay for it in installments, title to remain in the vendor until full payment made, can be sued for the purchase price when he attempts to cancel the order and refuses to accept the property when tendered. Cambridge Society v. Elliot, 50 Misc. 159, 98 N. Y. S. 232.

Innkeeper's Lien has Priority Where Contract Not Filed.

An individual became a guest at a hotel in New York City and stayed there for a period, under the usual conditions surrounding a guest at a hotel. She had a room in the hotel and took meals there. Under this arrangement an amount of money accrued from the guest to the hotel. Thereafter this guest hired a suite of rooms in the same hotel and made a written lease with the proprietor for such rooms. The tenant also took meals in the hotel and under this arrangement a considerable amount of money became due from the lessee to the hotel keeper. A few days prior to the time when the lease was made for an apartment in the hotel, and while the individual was staying there as an ordinary guest, a firm dealing in pianos having made a conditional sale contract with this guest for a piano, delivered such instrument at the hotel, and it was placed in the vendee's room, and it was afterward used in the apartment which had been leased as above described. There is no mention made that this conditional sale contract was ever filed. Vendee defaulted on the payments and vendor sought to take possession, but was resisted by the hotel keeper, after which action was brought by such vendor against the hotel keeper to determine which had the prior right. Under these facts it was held the hotel keeper had a lien on this piano which was prior to that of the conditional sale vendor under its contract, and could hold same in payment of its debt. (Recording or Filing, see New York, E.). Waters & Co. v. Gerard, 189 N. Y. 302, 82 N. E. 143. See also, Leonard v. Harris, 147 A. D. 458, 131 N. Y. S. 909.

Valid as to Prior Mortgagee of Real Estate.

A real estate mortgage was placed upon property consisting of buildings, wharves, dry docks, etc., with their contents. This mortgage further provided that it should cover all after acquired property of the mortgagor which was placed upon the premises thus mortgaged. With such real estate mortgage in existence a firm contracted under conditional sale agreement with the mortgagor. Such firm promised to furnish pumping machinery amounting to a large sum, title to same was retained in the vendor until paid for. This machinery was never paid for and after a considerable period of default a supplementary conditional sale contract was made extending the time of payments and notes were given thereunder which were never paid. The real estate mortgagee brought foreclosure under his mortgage and the entire property was directed to be sold, free of all liens. It was further directed that the conditional sale vendee of the pumping machinery should be paid in full before the mortgage debt on the real estate mortgage was paid. This part of the judgment was appealed from, but same was affirmed, under the theory that the pumping plant was an essential part of a dry dock system which existed on this property, that it had long been in use there, and the vendor of such machinery was not obliged to either take the pumps back, after they had been so extensively used, nor should he be relegated to the remedy of suing an insolvent vendee for the balance of the purchase price. In other words it was held, that the rights of a conditional sale vendor in this instance, were ahead of the rights of a prior mortgagee of real estate, upon which real estate the personal property covered by the conditional sale contract had been placed. (Fixtures, see New York, L.). Washington Trust Co. v. Morse Iron Works, 106 A. D. 195, 94 N. Y. S. 495.

Blanket Contract for Future Deliveries Invalid.

Scherl v. Flam (discussed in New York, O.), 129 A. D. 561.

Taking Chattel Mortgage Passes Title.

Where vendor takes a chattel mortgage following a conditional sale contract the title has passed to vendee, and upon default and repossession no sale as provided by Section 65 of the Personal Property Law is required. (Repossession and Refund, see New York, S.). Gaul v. Goldburg etc. Co., 85 Misc. 426, 147 N. Y. S. 516; Same effect, McMail v. Michaels, 147 N. Y. S. 516.

B. FORM OF CONTRACT.

Where the intent as derived from the whole instrument is to make a sale, then no matter if the agreement shall be called a lease or bailment, the law will construe it a conditional sale contract. An actual lease of personal property will, however, be upheld.

Oral Contract Valid.

Where a quantity of machinery had been delivered under an oral contract of conditional sale, providing that title thereto should remain in the vendor until paid for in full; the terms of payment were never complied with, and of course no copy of the contract was ever filed. Later on this machinery was sold by the vendee to another firm, and this firm subsequently sold it to a third. The original vendor brought action against this third firm to recover the value of such machinery, being an action in conversion. It was shown that both the first purchaser from the vendee, and the firm that purchased afterwards had knowledge of the conditional sale contract. Under such circumstances it was held that such knowledge had the same effect as though the contract had been in writing and properly filed, and that the original vendor could recover. (Recording or Filing, see New York, E.). Tompkins v. Fonda Glove Lining Co., 188 N. Y. 261, 80 N. E. 933.

Where household furniture had been delivered in New York under an oral conditional sale contract, and where the vendee had defaulted and the property had been taken back, it was not held 30 days by the vendor, as provided by New York law, and then sold at public auction after giving the proper notice. Vendee brought action to recover all the money which had been paid and was non-suited at the trial evidently upon the ground that the contract in question was oral and therefore had no legality. The case was appealed and this judgment was reversed, it being expressly stated that an oral conditional sale agreement, is valid in the State of New York, so far as it can be relied upon without having to be filed. Alexander v. Kellener, 131 A. D. 809, 116 N. Y. S. 98; Same effect, Herbert v. Humphreys et al, 66 Misc. 150, 121 N. Y. S. 235.

Lease with Option to Purchase is Conditional Sale Contract.

A steam road roller was delivered under written contract providing for the payment of rent at $10.00 per day for at least 64 days each year for five years, after which time by paying $1.00 additional and exercising an option to have the rent payments applied on the purchase price; the roller could be bought by the lessee. There was provision that the term of renting might be ended each year by giving certain notice, but unless such notice was given, which it was not, the term continued. This contract was made with town officials and in a taxpayers' action to determine its legality, was declared a conditional contract of sale and not a lease. Gardner v. Town of Cameron, 155 A. D. 750, 140 N. Y. S. 634; Affirmed, 215 N. Y. 682. Same effect, Grey v. Booth (discussed in New York, R.), 64 A. D. 231; Hoffman v. White Sewing Machine Co. (discussed in New York, S.), 123 A. D. 166; People ex rel Buffalo Steam Roller Co. v. Laidlaw, 155 A. D. 759, 140 N. Y. S. 641.

Where a printing press had been leased to an individual who was to pay rent and have such rent applied upon the purchase price later on, the press was delivered and a part of the

rent paid. The contract was not filed. The press was sold by the so called lessee, to a bona fide purchaser for value and the original owner brought replevin against such third party for possession.

Held: The contract was one of conditional sale and as it had not been filed was no protection as against a bona fide purchaser from the vendee. The replevin action was dismissed. Campbell etc. v. Oltrogge, 13 Daly 247.

A contract concerning personal property which provides for the payment of rent with an option to purchase later, and have the rent payments applied on the purchase price, is a conditional sale contract and not a lease. Weiss v. Leichter, 113 N. Y. S. 999.

Lease with Option in Separate Instrument not Conditional Sale Contract.

In a suit for possession of personal property the following facts appeared. The owner of a building in New York City contracted by pure lease for a mail chute to be placed in such building, and it was so placed that same could be removed without material damage to the chute or to the building. By a separate instrument executed between the same parties on the same date, an option to purchase was given, and to have the rent already paid applied upon the purchase price. Neither of these instruments were filed or recorded. The building was sold and conveyed as a whole after which the suit in question was brought.

Held: The chute had not become attached to real estate and did not pass under the real estate conveyance, that the present owner of the building had not shown himself to be a bona fide purchaser thereof, and the judgment which had been for the defendant in the trial court was reversed. The forms of contract used were discussed and it was intimated that the lease as given was valid as such, and the option did not convert it into a conditional sale contract. (Fixture, see New

York, L.). (Defenses and Counterclaims, see New York, Q.). Cutler Mail Chute Co. v. Crawford, 167 A. D. 246, 152 N. Y. S. 750.

Contract with Option to Purchase May Be a Lease.

Four sewing machines were delivered in New York City under a contract (see full text in opinion), which provided for the payment of rent, and gave the lessee an option to have such rent applied later on the purchase price. After several payments were made by the lessee, he defaulted, and lessor sued to recover the value of the machines as for goods sold and delivered. The amount claimed was exactly the balance of rent under the aforesaid contract. At the trial plaintiff recovered, but upon appeal the instrument was denominated a lease, and the judgment reversed for the court said this contract is a lease, and under it the purchase price cannot be collected. Singer Sewing Machine Co. v. Independent W. B. Mfg. Co., 141 N. Y. S. 488.

C. HOW EXECUTED.

They should be in writing signed by the vendee, but do not need to be signed by the vendor. The acceptance of such a contract on the part of the vendor by actnig upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

D. ACKNOWLEDGMENT OR PROOF.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid and to hold title as against certain

named third parties, the original or a copy of same must be filed. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed. (Exception as to Railroad Equipment).

E. RECORDING OR FILING.

In order to hold title as against certain named third parties, a contract of conditional sale must be filed as hereinafter stated. There is no provision for recording.

Filing Where Property is not Attached or to be Attached to a Building.

Where property sold under conditional sale contract is not supplied for a building and attached or to be attached thereto, a copy of the contract should be filed in order to retain title in the vendor as against subsequent purchasers, pledgees or mortgagees in good faith. The time when such filing should be made is not fixed by statute, but from court interpretations upon the subject, it seems safe to advise that such action should be taken forthwith after the contract actually becomes binding upon the parties. Where a formal contract is entered into and duly signed by all parties, a copy of the instrument should be made the same day, if possible, and mailed to the proper filing officer.

Where an order is secured from vendee which must be submitted to the vendor for acceptance, there is no contract existing until such acceptance is made, but when that action has been taken by vendor, a copy of the completed contract should be sent for filing with all due diligence. If a delay of more than a day or two intervenes, a satisfactory explanation would of necessity have to be made, and where a week or more elapses from the time when the order actually became binding

upon the parties without its having been filed; the vendor is in danger of being superseded.

The filing should be made with the clerk of the town or city where the vendee resides at the time of the execution thereof if a resident of the state, and if he is not such resident, then with the clerk of the town or city where such property is located at the time of the execution thereof. If there be more than one vendee residing within the state, a certified copy of the contract must be filed with the clerk of the town or city where each such vendee resides at the time of the execution thereof.

EXCEPT:

1. Where said town or city, outside of New York City, contains the office of the county clerk the contract must be filed in his office. (Town is used with the meaning of township).

2. In New York City the filing is made:

In the Borough of Brooklyn, in the office of the register of the County of Kings.

In the Borough of Queens in the office of the clerk of Queens County.

In the Borough of Richmond in the office of the clerk of Richmond County.

In the Borough of Manhattan in the office of the register of the County of New York.

In the Borough of Bronx in the office of the register of the County of Bronx.

If property is located in New York City when contracted for, and vendee resides elsewhere within the state, it seems necessary to file in the ordinary way, and also as provided for said New York City.

Every instrument affecting chattels, filed in the counties comprising New York City (Bronx, Kings, Queens, New York, Richmond), must be indorsed on the face thereof with the character of the instrument, the names of all the parties thereto, and the location of the property covered. This means that all contracts to be filed in New York City, should state the location in such city of the property affected thereby.

Filing Where Property is Attached or to be Attached to a Building.

Where property sold under conditional contract of sale is supplied for, and is attached or to be attached to a building, the said contract in order to retain title in the vendor as to subsequent bona fide purchasers, or encumbrancers of the premises on which such building stands, must contain a brief description of the premises sufficient for identification, and if in a city or village its location by street number, if known; and where the block system of recording and indexing is in use, (to wit New York City), the section and block within which the premises are located.

In order that such contract shall be valid as to the third persons above named, the original must be filed on or before the date of delivering said property at the building in question. The filing officer is the county clerk of the county within which are located the premises whereon the building stands. Except in the Borough of Brooklyn where it must be filed in the office of the register of Kings county; and in the Borough of Bronx, where it must be filed in the office of the register of Bronx county; and in the Borough of Manhattan where it must be filed in the office of the register of New York county.

Due to the fact that no definite interpretation can be placed upon the words "attached or to be attached to a building," it is advised that all conditional sale contracts covering personal property which is attached to, but does not become an actual and integral part of a building; shall be filed in accordance with both

methods provided for in New York. Where this precaution is taken no loss can occur, but under no other system can the vendor be protected beyond question.

Every instrument affecting chattels filed in the counties comprising New York City (Bronx, Kings, Queens, New York, Richmond), must be endorsed on the face thereof with the character of the instrument, the names of all the parties thereto, and the location of the property covered. This means that all contracts to be filed in New York City should state the location in such city of the property affected thereby. Consolidated Laws, Vol. 3, Lien Law, §§ 230, 232, 234, 235, as amended by Chapters 27 and 608, Laws of 1915. Sup. Vol. 10, Consolidated Laws, pages 338-340. Code of Civil Procedure § 3332D. Consolidated Laws, Vol. 4, Personal Property Law, §§ 60-67, as amended by Chapters 14 and 455, Laws of 1915, Sup. Vol. 10, Consolidated Laws, pages 529-531.

When Filing Not Necessary.

Herring v. Hoppock (discussed in New York, A.), 15 N. Y. 409; Cole v. Mann (discussed in New York, A.), 61 N. Y. 1; Prentiss Tool & Supply Co. v. Schirmer etc., (discussed in New York, A.), 136 N. Y. 305.

When Filing Necessary.

Waters & Co. v. Gerard (discussed in New York, A.), 189 N. Y. 302.

Must Be Filed Forthwith.

A chattel mortgage was given upon personal property on September 25, 1889, and was filed November 7, 1889. In January, 1890, a judgment was secured against the mortgagor upon a debt which arose prior to September 25, 1889. Out of these facts arose an action to determine the priority of lien un-

der such chattel mortgage, and the execution which had been issued under the judgment aforesaid and levied upon such machine. It was held, that the judgment creditor had priority as the chattel mortgage had not been filed forthwith under the circumstances. It was pointed out that under such facts, it made no difference, whether the debt under such execution so issued was prior or subsequent to the chattel mortgage. (Same rule as to conditional contracts). Karst v. Gane et al, 136 N. Y. 316, 32 N. E. 1073; Same effect, Stephens v. Perrine et al, 143 N. Y. 476, 39 N. E. 11; Stephens v. Meriden et al, 160 N. Y. 178, 54 N. E. 781; Vreeland v. Pratt, 42 N. Y. St. R. 582; Bullard v. Kenyon, 53 N. Y. St. R. 731; Seger & Gross Co. v. Maclaire, 165 N. Y. S. 423.

Filing of a chattel mortgage ten weeks after execution is invalid. (Same rule would apply to a conditional contract of sale). Levy v. Horn, 153 N. Y. S. 913.

Notice Obviates Filing.

Tompkins v. Fonda Glove Lining Co. (discussed in New York, B.), 188 N. Y. 261; Rodney, Hunt Machine Co. v. Stewart et al, (discussed in New York, G.), 57 Hun. 545.

Filing no Protection when Vendee Contractor.

Milicie v. Pearson (discussed in New York, L.), 110 A. D. 770; Jacobs v. Feinstein (discussed in New York, L.), 133 A. D. 416; Albert v. Steiner Mfg. Co. (discussed in New York, L.), 42 Misc. 522, 86 N. Y. S. 162.

Where no Delivery Made, no Filing is Required.

The statute on conditional sales in New York, where the property is not attached or to be attached to real estate, does not require filing unless such property has been delivered to the vendee. So held, in an action involving the rights of a vendor and those of a party who claimed to be a subsequent

mortgagee for value and without notice. The property in question was cattle, and had not been delivered. Flynn v. Badger, 173 A. D. 71, 158 N. Y. S. 859.

Valid as to Trustee in Bankruptcy Without Filing.

A cash register was delivered in New York under conditional sale contract and nothing was paid. The vendee became bankrupt, and vendor then filed the contract about ten days before the trustee in bankruptcy sold said property at public auction. The original vendor then brought replevin action for said register against the purchaser at such trustee's sale and was allowed to recover. National Cash Register Co. v. Gaul, 38 Misc. 743, 78 N. Y. S. 1128; Creamery Package Mfg. Co. v. Horton, 178 A. D. 767, 165 N. Y. S. 257.

At Auburn, N. Y., a Burroughs adding machine was purchased under conditional sale contract. This contract was never filed for record, and later an ordinary promissory note was given for the purchase price. There was no agreement that such note should be accepted as payment, and the note was never paid, but was retained by the vendor. Later on the Dalton Adding Machine Company took the Burroughs machine in a trade from the original vendee, and delivered one of its own machines under a conditional sale agreement, accepting the Burroughs as part payment, but never took actual possession of it, leaving same with the original vendee. The Dalton contract was never filed for record, and when the vendee of these two machines went into bankruptcy, a petition was presented by the Burroughs Company asking for return of its machine, and a petition was presented by the Dalton Company asking for return of its new machine, and for possession of the Burroughs which had been traded in on its contract. It seems to have been conceded that the trustee in bankruptcy had no right to either of these machines, except to pay the full balance owing on the contract if he saw fit, and retain them for the benefit of the estate. It was held that the note given on the Burroughs contract was not a payment, but only an evidence

of payment, and that title still remained with the vendor and could not be traded away by the vendee to the Dalton Company, for which reason the Dalton Company were denied the right to take the machine on their contract. They were, however, permitted to take back their new machine or have it paid for in full, at the election of the trustee, and the Burroughs Company were granted the same relief with reference to their machine. (Payment, Extension & Trade, see New York, J.). (Notes, see New York, N.). In re: Wegman Piano Co., 221 Fed. 128.

Where an adding machine had been sold in New York under conditional sale contract, there was no filing of such contract until after a trustee in bankruptcy for vendee had taken possession. Vendor petitioned in the bankruptcy court for possession of its machine and held, no filing is required by New York law as to a trustee in bankruptcy, and vendor was entitled to recover. In re: Remsen Mfg. Co., 227 Fed. 207; Same effect, Mergenthaler Linotype Co. v. Hull, 239 Fed. 26.

F. FILING FEE.

The fee for filing a conditional sale contract and making entry thereof is twelve cents. For refiling such contract and making entry thereof the fee is twelve cents.

If the party filing or refiling such a contract requires it, a receipt in writing must be issued to him by the filing officer, containing the names of the parties to the instrument filed, its date, amount, and the date and time of filing. For this service the filing officer is entitled to a fee of six cents.

The filing officers in the counties comprising the City of New York (Bronx, Kings, Queens, New York, Richmond), receive fees upon a different basis from the remainder of the state filing officials.

For filing a conditional sale contract or renewal thereof ten cents. For entering or indexing such a contract or renewal thereof in each book (two) ten cents for each party to the contract.

For issuing a receipt showing that the contract or renewal thereof has been filed, twenty-five cents. Also all necessary postage in sending such receipt or other papers.

In those instances where the property involved is attached or to be attached to a building, there is a charge of fifty cents for entering the contract in the block index book.

Where the amount involved is $100,000 or more, the fee for filing and entering same or any renewal thereof is one dollar for each $100,000 or fraction thereof. Consolidated Laws, Vol. 3, Lien Law, §§ 232-235, Sup. Vol. 8, pages 1673-75. Consolidated Laws, Vol. 4, Personal Property Law § 64. Code of Civil Procedure, § 3332D.

G. RE-RECORDING OR RENEWAL.

Refiling Where Property is not Attached or to be Attached to a Building.

Such contracts must be refiled within thirty days immediately preceding the end of one year from the date of the first filing, in order to preserve their validity as against subsequent purchasers, pledgees, or mortgagees in good faith. Each succeeding year must show a like refiling, and the thirty day period must be reckoned from the time of the first filing.

Such refiling may be affected by filing in the proper clerk's office:

1. A statement containing a description of such contract, the names of the parties, the time when and place where filed and the interest of the vendor or his successor therein.

OR:

2. By filing a copy of such conditional sale contract with its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the vendor or his successor therein.

When a vendee still resides at the place where the prior filing was made the renewal in either form should be filed in the same office.

Where the vendee is not such resident, but still resides within the state, the renewal shall be made by filing a true copy of such contract together with such statement, in the proper clerk's office as heretofore described for the original filing, same being fixed by his new residence.

Where the vendee is no longer a resident of the state, then in the proper clerk's office, as heretofore described for the original filing, as fixed by the location of the property at the time when the contract was executed.

Where the property was located in the City of New York when the contract was executed, the renewal must also be made by filing in the same office where the original filing was made, a copy of such contract with its indorsements together with a statement attached thereto or indorsed thereon, showing the interest of the vendor therein, or of any person who has succeeded to his interest.

In 1915, after the Borough of Bronx had become Bronx County, provisions were made for refiling, contracts in existence at that time, which were specially applicable to the new county. (See Laws of New York, 1915, Chap. 608). These provisions would not apply to contracts made since the County of Bronx came into existence.

Refiling Where Property is Attached or to be Attached to a Building.

A contract for the conditional sale of goods and chattels, attached or to be attached to a building, shall be invalid as

against creditors of the conditional vendee, and against subsequent purchasers or mortgagees in good faith of such goods and chattels, or of the premises upon which the said building stands, after the expiration of the first or any succeeding term of one year, reckoning the time from the first filing unless:

1. Within thirty days preceding the expiration of such term a statement containing a description of such contract, the names of the parties, the time when and place where filed, the interest of the conditional vendor or any person who has succeeded to his interest in the property, claimed by virtue thereof:

Or:

2. A copy of such contract and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the conditional vendor, or of any person who has succeeded to his interest in the contract, is filed in the office where the contract was originally required to be filed, provided however, if at the time such contract was executed the premises whereon the said building stands were then in the County of New York, but is now located in the County of Bronx, then such statement or a copy of such contract must be filed in the office of the register of Bronx County. (See Recording or Filing for citations).

Refiling Necessary as to Chattel Mortgage Given After First Year.

Colwell Lead Co. v. Home Title Insurance Co. (discussed in New York, L.), 154 A. D. 83; Affirmed, 208 N. Y. 591.

Not Necessary to Refile as to Rights Already Fixed.

Breeze v. Bayne, 202 N. Y. 206, 95 N. E. 727; Astor Mortgage Co. v. Milton Construction Co. et al, (discussed in New York, L.), 151 A. D. 557.

Refiling Unnecessary where Parties Have Notice.

Water wheels were sold and delivered in New York under conditional sale contract, such contract was properly filed on April 9, 1887, but was never refiled. On June 1, 1888, vendee executed a real estate mortgage upon the mill where the wheels were located, and such mortgage expressly covered the machinery, water wheels and fixtures now in, or which may hereafter be in, or upon the mill, or on said premises. No statement is made concerning the recording of such real estate mortgage, but the assumption must be that it was recorded. Foreclosure was brought on such real estate mortgage and a sale of said premises took place thereunder on May 4, 1889. On March 11, 1889, the vendee executed to the holder of the real estate mortgage a chattel mortgage upon the water wheels in question. No statement is made concerning the filing of such chattel mortgage and it was never foreclosed. The purchaser at the real estate mortgage foreclosure sale was the general manager of the vendee corporation, and it was he with his brother, also interested in the corporation, that negotiated the real estate mortgage and the chattel mortgage. Under such facts the original vendor of the water wheels brought an action in conversion against the vendee corporation, the general manager above described and his brother, demanding that the value of such water wheels should be paid.

Held: There had been a conversion and the plaintiff could recover. That the failure to refile the conditional sale contract had no effect, as the persons who secured the giving of the real estate mortgage and the chattel mortgage, and who were afterwards the purchasers at the foreclosure sale, had knowledge at all times of the conditional sale agreement. (Recording or filing, see New York, E.). Rodney Hunt Machine Co. v. Stewart & Others, 57 Hun. 545, 11 N. Y. S. 448.

Failure to Refile has no Effect on Chattel Mortgage Given During First Year.

Machines were delivered in New York under conditional sale contract which provided that title thereto, should remain in the vendor until payment in full, which should include the payment of any notes given. This contract was filed as provided by New York law, and notes were given which were never paid. The conditional sale contract was never refiled as provided by the laws of New York, but during the year while the original filing was still effective, vendee gave a chattel mortgage upon such property. This chattel mortgage was foreclosed and the mortgagee thereunder bought in the machines. Later on the original vendor brought action against him to recover their value. Two defenses were made, one that by failing to refile the contract within thirty days before the end of one year from the previous filing, the vendor had lost his lien as against the chattel mortgagee. Held this defense was of no avail, as the conditional sale contract was notice to this mortgagee and all persons claiming under him, the mortgage having been taken during the year while the conditional sale contract was properly filed. It was stated that a different question would be presented had the mortgage been taken after the year had expired. The other point raised was that the original vendor having brought action to recover the value of the machines, and having secured a judgment which was not paid, such action constituted an election, which prevented him from afterwards taking possession of the machines themselves.

Held: This action did not constitute such an election, as the contract expressly provided that title to such machines should remain in the vendor until paid for. That the giving of notes and the securing of a judgment did not constitute such payment. Under all the facts it was held that the original vendor could recover for the value of the machines. (Election of Remedies, see New York, P.). American Box Machine Co. v. Zentgraf, 45 A. D. 522, 61 N. Y. S. 417.

Failure to Refile within the Thirty Day Period Makes the Contract Invalid.

In re: Watts-Woodward Press, 181 Fed. 71.

H. DISCHARGE.

Upon payment or satisfaction of a conditional sale contract whether for property attached or to be attached to a building, or otherwise, the vendor, his assignee, or legal representative must upon request of vendee or any person interested in the property, sign and acknowledge a certificate of satisfaction or payment, and where such certificate is filed with the officer having the conditional sale contract on file, said officer must mark the contract discharged. A penalty for failure to satisfy is not stated, but the actual damage suffered could undoubtedly be recovered. Fees for filing and entering discharge, twelve cents.

The filing officers in the counties comprising New York City (Bronx, Kings, Queens, New York, Richmond), are entitled to receive fifty cents for filing and entering satisfaction of a conditional sale contract, and twenty-five cents for examining each assignment thereof. Also twenty-five cents for each record of discharge entered upon the block or alphabetical index. Consolidated Laws, Vol. 3, Lien Law, §§ 234, 238. Code of Civil Procedure, § 3332D. Consolidated Laws, Vol. 4, Personal Property Laws, § 64.

Discharge Before Payment Where Property Attached or to be Attached to Real Estate.

The lien upon real property of a contract for the conditional sale of goods and chattels, attached or to be attached to a building, filed as provided by New York laws in the office of a register of deeds or county clerk, may also be discharged in the following manner: Either before or after the beginning

of any action or proceeding to enforce the lien upon such property of any such contract, the owner of such real property, or of the building thereon, may execute an undertaking with two or more sufficient sureties, who shall be free holders, to the clerk or register of deeds of the county where the premises are situated, in such sum as a justice of the supreme court or the county judge may direct, not less than the amount due, and to become due upon such contract, conditioned for the payment of any judgment which may be rendered against such real property, or building on account of such contract. The sureties shall together justify in double the sum named in the undertaking. A copy of the undertaking, with notice that the sureties will justify before a justice of the supreme court, or the county judge, at the time and place therein mentioned, must be served upon the conditional vendor, or his attorney, not less than five days before such time. Upon the approval of the undertaking by the judge or justice, an order shall be made discharging such lien. The bond in question may be executed by a surety company. If the conditional vendor cannot be found, or does not appear by attorney, such service may be made by leaving a copy of such undertaking and notice at the conditional vendor's place of residence, or if a corporation at its principal place of business within the state as stated in the contract, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said contract and is not known, then in such manner as the court may direct. The premises, if any described in the contract as the vendor's residence or place of business shall be deemed his said residence or place of business for the purpose of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary. Personal Property Law, § 64-A, as added by Chapter 697, Laws of 1917.

I. CRIMINAL LIABILITY OF VENDEE.

It is a misdemeanor to sell, assign, exchange, secrete or otherwise dispose of property held under conditional sale con-

tract, punishable upon conviction by imprisonment in the county jail for not more than one year, or by a fine of not more than $500.00 or both.

A vendee may also be guilty of larceny where he is in default, and proper demand has been made upon him for return. Penal Law, §§ 940, 1290, 1937.

Crime to Withhold Property.

A diamond ring was delivered in New York under two written agreements, which together made a conditional sale contract. This contract provided among other things that if vendee defaulted, he must surrender possession of the ring, but having done so, he was entitled to receive other jewelry commensurate in value with the money he had paid in. Under such circumstances vendee made default and vendor demanded return of the ring, but did not offer other jewelry, in compliance with the terms of such contract, vendee having paid in certain sums of money. Vendee refused to deliver possession of the ring and was arrested and convicted of larceny. This conviction was reversed by the Court of Appeals, chiefly upon the ground that vendee had not been guilty of felonious intent when he kept the ring, as he was entitled to receive other jewelry before being obliged to surrender said ring. The opinion clearly implies that under a conditional sale contract where the vendor has performed in full, and the vendee is in default, then upon proper demand for return of such property and a refusal on the part of the vendee to surrender it, the crime of larceny has been committed if the jury finds that it was the vendee's intent to deprive the true owner of its property. In this case before the criminal action was started vendor had sued vendee in conversion and secured a judgment for the value of the ring, but such fact was given no weight in making the above determination. People v. Gluck, 188 N. Y. 167, 80 N. E. 1022; See, People v. Stanton, 79 A. D. 634, 80 N. Y. S. 2.

J. PAYMENT, EXTENSION AND TRADE.

When Payment May be Made.

In the case of a conditional sale contract where title is to vest in vendee upon payment, the purchaser may perfect such title at any time by tendering the balance unpaid with interest on all deferred payments to the date of their maturity So held in an action of replevin involving a sewing machine. Cushman v. Jewell, 7 Hun. 525.

Effect of Extension and Removal.

Where a vendee under conditional sale contract had become in default the vendor had made demand for the property, but later had granted further time, and had accepted partial payments. The contract provided that the piano in question should not be moved from a stated address in Rochester, N. Y., without vendor's consent. This consent was given and the instrument moved to another place in Rochester. Later without vendor's consent said piano was moved out of the city, and as vendee was in default, vendor brought action for possession. No demand was made at such time for possession, but it was held the removal of such piano outside the city of Rochester was such an act as created a forfeiture under said contract and no demand was necessary. Plaintiff was permitted to recover. (Repossession and Refund, see New York, S.). Gibbons v. Luke, 37 Hun. 576.

Extension May be Granted.

Cunningham v. Hedge, (discussed in New York, S.), 12 A. D. 212.

One Receiving Conditionally Sold Property in Trade is not Bona Fide Purchaser.

In re: Wegman Piano Co. (discussed in New York, E.), 221 Fed. 128.

K. LOSS, WHO MUST BEAR.

Vendor Loses.

A cash register was delivered under conditional contract of sale. The contract provided that when payment in full should have been received the register was to become the property of the vendee. There was no provision for a bill of sale. Before the property was paid for in full the building in which the said property was located burned without the fault of either vendor or vendee.

In a suit for the balance it was held that as the contract left nothing to be done by the vendor, not even the giving of a bill of sale, the consideration for the promise of vendee to pay had not failed and it was liable for the balance of the purchase price. National Cash Register Co. v. South Bay C. H. Ass'n., 64 Misc. 125, 118 N. Y. S. 1044.

This case establishes the rule under an ordinary conditional contract of sale reserving title in vendor until paid for, and by which terms a bill of sale is to be given when full payment is received; that in case the property is injured or destroyed before payment, the vendor must stand the loss.

On the other hand it is settled that such contract may impose the loss upon the vendee if properly drawn and thus make the case an exception to the general rule.

L. FIXTURES. (See Recording or Filing).

What is not Attached to a Building.

The owner of real estate in New York City desiring to build thereon, executed two mortgages upon such property to secure advancements of money which were to be paid under the mortgages to the owner, as the construction of the building progressed. No statement made as to whether or not these mortgages were recorded, but it is assumed that they were

properly recorded. They were dated September 10, 1898. Thereafter the owner of the premises, being the mortgagor, under the real estate mortgages, contracted with a plumbing firm to furnish and install the plumbing in such building, consisting of closets, wash basins, tubs, sinks, and smaller articles, known as plumbers' fixtures. This contract was dated March 17, 1899, and was filed March 30, 1899, being the date following the day when such vendor plumbing firm began furnishing the articles in question at the building. Under the real estate mortgages one of the payments was to be made, when the plumbing work was fully completed, and was so made after the plumbing firm had completed its contract. The owner of such building failed to pay for the plumbing, and such firm started to remove the articles which had been furnished under their contract. At this point the holder of the real estate mortgages brought action to restrain them from such acts. Under such facts it was held that the prior mortgagee of the real estate had no rights which were ahead of the vendor, under the conditional sale contract to furnish the plumbing; that such plumbing had not become a fixture in the buildings and that it could be removed. New York Investment Co. v. Cosgrove, 47 A. D. 35, 62 N. Y. S. 372; Affirmed, 167 N. Y. 601.

A party contracted to buy real estate and was put in possession of same, he then contracted for an engine under conditional contract of sale and this engine was fastened to a cement foundation by bolts and nuts which could be unscrewed. Such party afterwards defaulted on both the land contract and the conditional contract of sale for the engine. Vendor of said engine demanded delivery or payment of the full contract price when there was only a small balance remaining under the contract. Suit in conversion was brought by vendor of engine.

Held: The engine did not become a fixture, but the plaintiff was only entitled to recover the balance unpaid. (Measure of Damages, see New York, R.). Duntz v. Granger Brewing Co., 96 A. D. 631, 41 Misc. 177; Affirmed without opinion in 184 N. Y. 595.

Machinery for a brewery was sold under conditional contract of sale which was not filed. Openings were made in the brewery walls and roof to put it in position. Some was fastened to the building and to foundations, and other parts stood of their own weight. A mortgage was afterwards placed on the real estate and this machinery was especially described therein as real property. An action was brought to foreclose on the real estate mortgage and the vendor of the machinery defended.

Held: The contract did not need to be filed as to the subsequent mortgage as the property covered by it was not in existence when the contract was made and was not completed and delivered for some time thereafter, further that the property in question would have become a fixture but for the contract, but under the circumstances it remained personal property and could not be foreclosed. Davis v. Bliss, 187 N. Y. 77, 79 N. E. 851.

A decision in the appellate division had been that the boilers and a heating plant in a building were fixtures. Mr. Justice Scott dissented from the prevailing opinion, and the Court of Appeals reversed such judgment upon his opinion, thus, holding that a heating plant under conditional sale contract did not become attached to a building in such a manner as to make it a fixture, and to make it necessary that such contract should be filed as against bona fide purchasers and incumbrancers of the real estate. Fitzgibbons etc. v. Manhasset etc., 125 A. D. 764, 110 N. Y. S. 225, Reversed, 198 N. Y. 517.

A building and loan association took mortgages upon real estate situate in Greater New York, and properly recorded same. Thereafter the owner of such premises bought under conditional sale contract plumbing fixtures for the building being erected on the mortgaged lands. These articles consisted of bath tubs, bowls, sinks, closets and the necessary attachments. The conditional sale contract was properly filed, after which the real estate mortgages were foreclosed, and the ven-

dor of said plumbing articles was made a defendant, but did not litigate its rights in such foreclosure. The building was sold under foreclosure, and the purchaser thereafter sold to another and from such purchaser at the foreclosure sale the original vendor of the plumbing sought to recover for its conversion. The conditional sale contract was not refiled, and the sale to the third person was after the first year had expired. All these facts appeared on demurrer to the answer and held, the third party secured good title because of the failure to refile the conditional sale contract, but the vendee at foreclosure was liable. (Re-recording or Renewal, see New York, G.). Colwell Lead Co. v. Home Title Insurance Co., 154 A. D. 83, 138 N. Y. S. 738; Affirmed, 208 N. Y. 591.

Gas ranges were furnished and installed in the apartments of a large building in New York City under conditional sale contract, by which title was retained in the vendor until paid for. This contract was made with the owner of said building and was never filed. These ranges were attached to the plumbing and gas pipes in each apartment, but could be removed without material damage to the building or to the ranges. The conditional sale vendor was never paid in full for the ranges, and later on a mortgage upon the real estate and building was foreclosed, and a sale had (not stated whether such mortgage was prior to the conditional sale contract or subsequent to it). The original vendor of such ranges brought action in conversion for the value of such ranges against the purchaser of the real estate at the foreclosure sale. At the trial judgment was in favor of the defendant, but same was reversed by the Court of Appeals upon the ground, that as to the owner of the real estate or the purchaser at the mortgage foreclosure sale these ranges had not been so attached to the real estate as to become a part thereof, and that no filing of such contract was necessary as against a subsequent bona fide purchaser or incumbrancer of the buildings.

In other words it was held in substance, that in order for it to be necessary to file a conditional sale contract as provided

in New York law, where property is attached or to be attached to a building, such property must be so attached as to become a fixture under the law, and that where property sold under such a contract does not become a fixture upon the building no filing is necessary as against subsequent bona fide purchasers or incumbrancers of the real estate. Central Union Gas Co. v. Browning, 210 N. Y. 10, 103 N. E. 822.

Stoves and ranges were furnished for an apartment house in Kings county under a conditional sale contract by which all title was retained in vendor until paid for in full. This contract was properly filed before the delivery of said property at the buildings where they were afterwards installed. The stoves and ranges in question were designed to be permanent equipment in the buildings, to be used for heating and cooking, and they were attached to the plumbing with that idea in view. Prior to the time when such conditional sale contract was made a mortgage had been executed upon the real estate, and after the transactions explained above a foreclosure action was brought upon such mortgage, and the conditional sale vendor of the stoves and ranges was made a party. In that action the rights as between such real estate mortgagee, and the conditional sale vendor of the stoves and ranges was litigated, and it was held, that such stoves and ranges retained their identity as personal property under the conditional sale contract, and the real estate mortgage did not cover them. Barwin Realty Co. v. Union Stove Works, 146 A. D. 319, 130 N. Y. S. 781; Affirmed, 210 N. Y. 537.

Ice machinery was sold under conditional sale contract and such contract was thereafter assigned by vendor to a firm engaged in the manufacturing of such machines. The contract was not filed. The building and real estate where same were installed in New York were subject to a real estate mortgage at the time of such installation, and later a foreclosure action was brought upon said mortgage, to which the assignee of the conditional sale vendor was made a party, the claim being that

the machinery in question had become a fixture upon real estate, and therefore subject to the mortgage.

Held: It had not, and the real estate mortgage did not cover it.

The contract further provided that title should not pass until paid for in full, and until the payment of any notes given. Before the foreclosure vendor's assignee had sued vendee and secured a judgment upon unpaid notes under the contract, but such judgment was never satisfied. Held this was not an election of remedies and did not prevent a return of the property. (Election of Remedies, see New York, P.). Ratchford v. Cayuga Co. Cold Storage etc. Co., 159 A. D. 525; Affirmed, 217 N. Y. 565, 112 N. E. 447.

In an action involving possession of gas fixtures which had been sold under conditional sale agreement, at a time when such contract was not required to be filed, where the property covered was household goods, if a duplicate of such contract was delivered to the vendee, it was held that gas fixtures placed in a building are personal property under ordinary conditions, and do not become a part of the real estate. Baldinger v. Levine, 83 A. D. 130, 82 N. Y. S. 483; Same effect, Kerby v. Clapp, 15 A. D. 37, 44 N. Y. S. 116.

Prior Mortgagee Does not Take Pumps on Real Estate.

Washington Trust Co. v. Morse Iron Works, (discussed in New York, A.), 106 A. D. 195.

Mantles, mirrors, plumbing and other property was furnished under conditional sale contract for certain houses located in Kings county, New York. These contracts were properly filed for record, before the materials were so furnished and there was a real estate mortgage upon the premises, at the time when the articles of personal property were so furnished. Later on foreclosure was brought under such real estate mortgage, and it was sought to cut off the above conditional sale

vendor as to the balance unpaid on his articles. Held, his lien was valid as against a prior mortgagee of the real estate. The conditional sale contract had been properly filed, and the foreclosure action was brought before the end of one year after such filing. The conditional sale vendor did not refile his contract within 30 days next preceding the end of such year. In the foreclosure suit this point was raised, and it was held, that no such refiling was necessary, as the situs of these parties had been fixed by the beginning of the foreclosure action, while the conditional sale contract was still valid, under its first filing. It was stated that as to the rights of other parties, which might have arisen after the time, when the foreclosure suit was brought, that it possibly might have been necessary to refile as to them, but no such persons' rights were included in the suit. (Re-recording or renewal, see New York, G.). Astor Mortgage Company v. Milton Construction Co. & Others, 151 A. D. 557, 136 N. Y. S. 82.

A Mail Chute Does not Become Attached to a Building.

Cutler Mail Chute Co. v. Crawford, (discussed in New York, B.), 167 A. D. 246.

Plumbing put in a house under conditional sale contract with the owner, does not become a fixture, and may be removed as to prior mortgagee of real estate. Leibowitz v. Thomson R. E. Co., 158 A. D. 592, 143 N. Y. S. 802.

Where a real estate mortgage existed upon several houses and lots in Queens county, N. Y., the gas fixtures and heating plants in such houses were furnished under conditional sale contract and these were duly filed with the county clerk of Queens county. Thereafter another mortgage was placed upon the real estate involved, and upon the first mortgage being foreclosed the premises were purchased by a party who paid therefor, and upon learning of the conditional sale contracts demanded a return to him of the money, so paid, to an amount which would be recompense for the balance he must pay upon

such contracts in order to retain the personal property in question. The referee on foreclosure made the refund, and proceedings were then instituted by the second mortgagee against such referee to recover the money so paid. The second mortgagee claimed it as surplus.

Held: Recovery could be had, as the personal property never became a part of the real estate, and the purchaser at such foreclosure sale secured no rights in it, and was not entitled to the refund. Foreman v. Nordon Construction Co., 167 A. D. 712, 152 N. Y. S. 592.

Property not Accepted Cannot Become Fixture.

A firm engaged in the business of manufacturing electrical machinery sold electric generators under conditional contracts of sale to a firm in Rochester, N. Y., and this firm before the machines were shipped, sold them to a corporation which owned and was equipping an amusement park in that city. The contract never was filed as provided by New York law. The plans and specifications for the machines were examined by the officers of the Amusement Company and its architect, and written notice of the terms of the conditional contract of sale was served on the officers of such company before delivery. The machines were shipped direct to the Amusement Company, placed upon foundations and permanently fixed thereto, connections were also made between such generators and the boilers of the plant by means of steam pipes so that they might be operated in furnishing electric current for use in the park. The machines were not paid for by vendee, and the Amusement Company in whose possession they were, went into bankruptcy. The trustee in bankruptcy sold the machines to individuals who had been the officers of the Amusement Company, and these persons later formed another corporation and sold the machines to such corporation. Action was brought by the original vendor against this latter corporation to recover the machines, and upon the trial the court directed a verdict for the defendant. Upon the first appeal it

was decided that the machines were attached to real estate within the meaning of the New York statute, and in case there had been a subsequent bona fide purchaser or encumbrancer of the premises the lien of the conditional sale contract would have been lost. But inasmuch as the terms of the agreement were brought to the attention of the very persons who afterward purchased the machines at trustee's sale, and were officers of the corporation to which they afterward sold them, and as a trustee in bankruptcy is not a subsequent bona fide purchaser or encumbrancer, the contract did not need to be filed as to them and a new trial was ordered. (140 A. D. 726).

Upon the new trial verdict was for plaintiff and this was set aside by the trial judge. An appeal taken resulted in a reinstatement of the verdict, chiefly upon the grounds:

First—That these machines never had been accepted and could not therefore have become fixtures, and

Second—That the parties defendant were not shown to be bona fide purchasers for value. (Defenses and Counterclaims, see New York, Q.). Crocker-Wheeler Co. v. Genesee Recreation Co., 160 A. D. 373, 145 N. Y. S. 477.

Trustee in Bankruptcy Does not Take Stoves in Apartment House.

A letter was written by an agent of the owner of stoves and ranges, offering to furnish certain of these to be set up in a tenement house, title was to be retained in vendor until paid for. Pursuant to such offer the stoves were delivered and attached in the usual way to the building. A copy of the contract was filed as provided by New York law. The tenement house owner then became bankrupt, and upon petition of the owner of said stoves for payment in full, or the right to foreclose his lien, the sufficiency of this contract was attacked by the trustee.

Held: It was a valid conditional sale contract as against the trustee. In re: Cohen, 163 Fed. 444.

What is Attached to a Building.

The owner of a lot in New York City upon which he was erecting a large building contracted with an individual for a steam heating plant to be installed in such building. This contract was one of conditional sale, but was not filed until long after the plant was completed, and after the building had been sold to a bona fide purchaser for value. The heating plant consisted of a boiler with pipes extending through the building, there being radiators in the different rooms, connected with such pipes by valves and other appliances. The vendor never received payment in full for this property, and at one time filed a mechanic's lien against the original owner's interest in the building, he being the vendee of the heating plant. The mechanic's lien never seems to have been foreclosed. After the building, including such heating plant, had passed through the hands of two persons, by purchase, the original vendor of such heating plant brought a replevin action against one of these purchasers to recover possession of said plant.

Held: He had filed a mechanic's lien for the amount owing which was an election of remedies. Another reason being that he had failed to file a copy of his contract before making delivery of the heating plant at the building to which it was afterwards attached. It was held that such heating plant so installed in the building was a fixture and had passed to the bona fide purchasers of such building. (Election of remedies, see New York, P.). Kirk v. Crystal, 118 A. D. 32, 103 N. Y. S. 17; Affirmed, 193 N. Y. 622.

Property not in existence was contracted for under conditional contract of sale, and was afterwards attached to a building. Contract was not filed and the building was sold.

Held: The purchaser of such building got good title to the fixtures even though the property was not in existence at the time the contract was made. McLean v. Griot, 118 A. D. 100, 103 N. Y. S. 129.

A contract was made for the furnishing of iron work in the reconstruction of certain buildings in Brooklyn. This iron work consisted largely of stairs and fire escapes. The contract under which it was to be furnished was a conditional sale agreement, but it was not filed until after the work was completed. Later a prior mortgage upon the building was foreclosed and a sale had. The parties who bought at such sale afterwards sold the property again to a third person, and against him action was later brought to recover in conversion for parts of the stairs and fire escapes so furnished.

Held: That as the contract in question had not been filed before the property covered by it was delivered at the building where it was to be attached, or did thereafter become attached, no recovery could be had, as against the bona fide purchaser of the premises. Klein v. Cohen, 142 A. D. 500, 127 N. Y. S. 171.

Where ice machinery had been delivered in New York under conditional sale contract, the property to which it became attached was subject to a real estate mortgage. The contract provided that title should not pass until paid for in full, which should include the payment of any notes given. The right to file a mechanic's lien was also provided for in the contract. One payment became due, was not paid, and vendor brought action to recover the entire contract price. Judgment was secured but never paid. Vendor also filed a mechanic's lien. Later the real estate mortgagee brought foreclosure and made the original vendor a party defendant. Vendor appeared at the sale and gave notice of its rights. Later and before the purchaser at such sale paid the purchase price, or received a deed, vendor demanded possession of the machinery, which was refused. Such original vendor under the conditional sale contract then brought action in conversion.

Held: No proper demand had been made, and further there had been an election of remedies in suing for the purchase price, and filing the mechanic's lien, which prevented an action in conversion. (Election of Remedies, see New York,

P.). Shipley Construction etc. Co. v. Mager, 165 A. D. 866, 150 N. Y. S. 969; Same effect, York Mfg. Co. v. Mager, 165 A. D. 872, 150 N. Y. S. 973.

Property Sold to Contractor Becomes Fixture.

A person who rented a store in Brooklyn desired to have it fitted up as a retail tailoring establishment. Under such circumstances he made a contract with a firm to do the work and furnish all the fixtures. This firm afterwards let to another, that part of the construction work which embraced counters, show cases and other articles. The contract between these two parties was, that title to these articles should be retained in the sub-contractor until paid for, and this contract was filed as provided by law, before all of such articles had been placed in the store. Later on the sub-contractor not having been paid in full, assigned his interest in the conditional sale agreement to a third person, and this third person brought action against the store keeper for their possession. The complaint was dismissed at the trial and judgment was entered for defendant. From such judgment plaintiff appealed and same was affirmed, upon the theory that where property such as this was furnished to a contractor to be used in a certain way, and the person so furnishing it knew at the time when the contract was made how it was to be so used, that person could not thereafter, even though he held a conditional sale contract upon the property properly filed, recover its possession from a person who had received it from the principal contractor.

In other words, the basis of this decision was that a conditional sale contract, even though properly filed will not protect the vendor, where the property in question is delivered to a contractor, and is used by him in performance of his contract to equip a store or building, or under any other circumstances where the original owner of such goods knows how they are to be used, when he makes his contract. (This decision evidently overlooked the full import of the New York law for filing of contracts covering property attached or to become attached to

real estate). (Recording or Filing, see New York, E.). Milicie v. Pearson, 110 A. D. 770, 97 N. Y. S. 431. Same effect, stoves for flats, Jacobs v. Feinstein (Recording or Filing, see New York, E.), 133 A. D. 416, 117 N. Y. S. 823.

Where gas fixtures were sold to a contractor under conditional sale contract, the vendor knew same were to be used in fitting up a bank building, and they were so used. Action was brought by vendor to foreclose the common law lien of the conditional sale contract. Nothing said as to whether or not the contract was filed, and the transaction took place before the statute of New York on property attached or to be attached to real estate.

Held: As the property was bought to be sold again no lien accrued and no recovery could be had. (Recording or Filing, see New York, E.). Albert v. Steiner Mfg. Co., 42 Misc. 522, 86 N. Y. S. 162.

M. LANDLORD'S LIEN.

No provision.

N. NOTES.

Notes are not Payment.

The taking by the creditor under conditional contract of sale of the debtor's note for an existing indebtedness does not merge or extinguish the indebtedness, the note is simply evidence of the debt and its operation is only to fix the time of payment. When default is made in payment, the creditor may sue on the original demand and bring the note into court to be delivered up on the trial. Jagger Iron Co. v. Walker, 76 N. Y. 521; See, St. Albens Beef Co. v. Aldridge, 112 A. D. 803, 99 N. Y. S. 398.

Where printing presses had been delivered in New York under conditional sale agreement, the vendee made an assignment and his assignee retained the presses, claiming title thereto. There were several presses sold to the assignor, and provision was made in each instance, that notes should be given in settlement; that a policy of insurance should be given on the property, and that security should be given for the payment of the notes. There is no mention made of this contract ever having been filed. The original notes, as given, were renewed from time to time at the vendee's request, but no security ever passed between the parties. One of the main questions at issue was as to whether or not the giving of notes under such circumstances operated as payment and superseded the conditional sale contract, so that title passed to the vendee and from him to his assignee, for the benefit of creditors. It was held that the giving of notes did not operate as payment and the original vendor was entitled to recover its property. (Legal Status, see New York, A.). Campbell Printing Press & Mfg. Co. v. Walker, 114 N. Y. 7, 20 N. E. 625; Same effect, In re: Wegman Piano Co. (discussed in New York, E.), 221 Fed. 128.

It is stated in this case that in Indiana, Me., Mass. and Vt., a note given without express agreement that it shall not be regarded as payment of a debt, will be considered as payment of a debt. In all other states the rule is given to the effect, that a promissory note given for a debt does not become payment thereof and extinguish the original debt, and the security surrounding it, unless there is a specific agreement to that effect, at the time when the note is given and accepted.

Notes, no Need to Surrender.

A conditional sale vendee of machinery who had given notes for the purchase price made an assignment, and the assignee took possession of the machines. The vendor demanded return thereof from such assignee, and upon refusal brought an action in conversion against such assignee. Upon the trial

it was insisted that such action could not be maintained without surrendering the notes, which had been given by the original vendee, only one of which had become due, and all of which were outstanding. It was held that the original vendor could recover his property irrespective of where the notes were. (Legal Status, see New York, A.). Brewer v. Ford, 59 Hun. 17, 12 N. Y. S. 619; Affirmed, 126 N. Y. 643.

Where a replevin action was brought under a conditional sale contract to recover a cash register, one of the defenses set up was to the effect, that the notes given under such contract covering deferred payments had not been tendered to vendee before such action was commenced.

Held: That no such tender was necessary, and the notes could be delivered up at the trial. National Cash Register Co. v. Ferguson, 25 Misc. 363, 55 N. Y. S. 592.

In a bankruptcy case in New York involving the sale of furniture under a conditional sale contract, the facts of which transaction do not appear very clearly in the opinion, it was held, that where notes had been given and had been indorsed by the vendor, but not without recourse, and had afterward been taken up by him, that such actions constituted an election of remedies which would constitute a waiver of the title. It was further held that where notes are in existence under conditional sale contract, it is not necessary to offer or tender a surrender of such notes, at least, before bringing an action for possession of the property. (Election of Remedies, see New York, P.). In re: Rector's, 220 Fed. 645; In re: Ward, 220 Fed. 645.

O. RETAILER.

Consignment, What Constitutes Valid as to Third Parties.

A piano was delivered in New York under an agreement stating that same was consigned, and was to remain the prop-

erty of the consignor until paid for by the consignee. Later on the consignee signed a note covering the agreed purchase price of the piano, and on such note was a clause that title should not pass until payment in full. The consignee was a dealer in pianos at Lockport, N. Y. and it was agreed between the consignor and the consignee that such piano might be sold by the consignee, who should remit the proceeds of such sale, sufficient to pay the note, or if the purchaser gave a note for part of the price, said note was to be turned over to the consignor. The piano was not paid for and it was not sold to a third person, but while in the possession of the retail dealer same was levied upon under execution issued against the retailer. Before and at the sale so made under the execution, the sheriff was notified that the wholesalers claimed the piano and a demand was made upon the sheriff for its possession and he was forbidden to sell it. The piano was, however, sold under the execution. An action was then brought by the wholesalers against the sheriff for damages.

Held: The whole transaction evidenced a consignment and not a sale, either absolute or conditional; that the sheriff was not a bona fide purchaser and the seizure and sale by him was unlawful. The wholesaler was permitted to recover. (Legal Status, see New York, A.). Cole et al v. Mann, 62 N. Y. 1.

A firm located at Utica, N. Y., manufactured harnesses. This firm placed such harnesses with persons called agents, who were in fact retail dealers of such goods, and the agreements, in such instances, between the parties were in writing (see contract in full in opinion). This contract provided in substance, that title to all goods so delivered should remain in the manufacturer until paid for; that the retailer should receive as his compensation, all sums he took in on the sale of the property over and above certain fixed prices. He was to hold all money received for the benefit of the manufacturer. There was no agreement that the retailer should keep and pay for any goods which he, himself had not already sold. This

contract was not filed for record, and a retail merchant in Rochester who had a considerable number of harnesses on hand under such an agreement, turned them over to a wholesale wagon manufacturing company, whose wagons the said retailer had been selling and had thus become indebted to the wagon company. The consideration for such transfer of the harnesses was a pre-existing debt, and a promise by the wagon company to pay certain notes upon which the retailer was liable. Under these facts the original owner of the harnesses brought replevin action against the wagon company to recover this property.

Held: Such recovery could be had as the harnesses had been delivered on consignment to the retailer, who could pass no title to a third person under the facts as above stated. Childs & Co. v. Waterloo Wagon Co., 37 A. D. 242, 57 N. Y. S. 520.

Consignment Valid in New York as against Trustee in Bankruptcy.

A paint manufacturing company located in Ohio had an arrangement with a firm doing business at Utica, New York, whereby paint was delivered to the New York firm under substantially the following facts: A stock of paint was sent to Utica, the manufacturer paying the freight. The paints while in the possession of the New York firm were kept insured by the original owner. Both the paint company and the New York firm had the right to sell from this stock, and the price was fixed by the original owner of the paint. The hardware company was not obligated to purchase any portion of this paint, but made sales and received as their compensation ten per cent of the selling price. Goods were sold from this stock by the original owner, and were shipped out upon its order by the hardware company, and the hardware company received eight per cent upon such sales made. At the end of each year a settlement was effected between the parties interested, the hardware company paying the amount it owed for goods which

had been sold and receiving its commissions. The hardware company never paid for any stock of paint received, except after sales had been made out of the stock on hand. Such hardware company became bankrupt, and on the same day that the adjudication was made several thousand dollars worth of this paint was turned over to the paint company, its original owner. This paint company later on sought to prove a claim in bankruptcy for the paint it had not been paid for, and this claim was rejected by the trustee on the ground, that the taking back of the paint in question had constituted a preference to said paint company, and their claim upon the unsecured debt could not be proved in bankruptcy until they had, either returned the paint in question, or paid its value to the trustee.

Held: The whole transaction constituted a consignment; that no conditional sale was contemplated, or executed, and repossession of the paint in question did not constitute a preference, for which reasons the unsecured debt in question could be proved in the bankruptcy proceeding without making a refund. In re: Wright Dana Hdw. Co., 211 Fed. 908; In re: Hamil, 236 Fed. 292.

Right to Change Character of Property does not Invalidate Contract.

Prentiss Tool & Supply Co. v. Schirmer etc. (discussed in New York, A.), 136 N. Y. 305.

Consignment Valid Between Parties Thereto.

An action was brought to recover for notes given on account of lumber shipped, also to recover for balance unpaid on such lumber, for which no notes were ever given, and also to recover for discounts paid on notes that were renewed, and also to recover for money paid as freight upon the lumber so delivered. The main defense was to the effect that under the agreement between the parties, the action in question should have been for an accounting and not for a money judgment. The

contention being that the relation between the parties was essentially that of principal and agent. The lumber in question was shipped under a contract (full text in the opinion). This agreement provided in substance that the lumber was to be delivered by a wholesaler to a retailer, and could be sold by such retailer in the ordinary course of trade; that title to all lumber not sold was retained in the wholesaler until paid for, that the proceeds of all sales made by the retailer should be and remain the property of the wholesaler until the whole amount of lumber shipped had been paid for in full. It further provided that all sums of money received by the retailer for the lumber sold by him should be held by the retailer for the wholesaler, until all lumber which had been sold had been paid for in full. That all claims and demands arising from the sale of such lumber by the retailer should be and remain the property of the wholesaler, until all the indebtedness from the said retailer to the said wholesaler on account of lumber to be so delivered had been fully discharged. No rights of third parties intervened in this transaction in any way. It was held, that an action for money had and received could be maintained and that it was not necessary to bring an action for an accounting. The import of this decision seems to have been that the contract as made was valid; that the proceeds from all sales as made actually belonged to the wholesaler until his full indebtedness had been settled, and as he had not been paid in full the judgment in his favor was affirmed. Weston v. Brown, 158 N. Y. 360, 53 N. E. 36.

Conditional Sale, What Constitutes Valid as to Third Parties.

The owner of a stock of goods in a store sold same to his son and the contract provided that title thereto should remain in the father until full payment had been received. It was further provided that the son should have the right to sell these goods in the ordinary course of trade. It was further provided that all new goods purchased by the son were to take the place of those which had been sold by him and title thereto was to

be held by the father until full payment was made. Under such arrangement a part of the original stock was sold by the son and new goods were purchased by him and placed in the store. This situation continued for nearly one year, at which time the father took possession of all the goods in the store under his contract and was engaged in the making of an inventory, when the entire stock was levied upon under execution on a judgment secured against the son. The father brought action against the sheriff to recover the value of all the goods so levied upon. The principal defense was that these goods were in the hands of the son under conditional sale contract, which permitted him to dispose of them in the ordinary course of trade. It was claimed that under such arrangement a fraud had been committed as against the creditors of the son which caused title of all the goods in question to pass to the son and that the levy as made was valid.

Held: Such father had actually taken possession of these goods under his contract prior to the levy made and there being no actual fraud found surrounding the transaction, by which the father took the goods back, therefore, the son had no title or interest therein at the date when levy was made, for which reasons father could recover as against the sheriff. Powell v. Preston, 1 Hun. 513.

Where agricultural implements had been delivered to an agent for sale the contract made the agent liable to pay for all machines not sold by a certain day. This payment to be made by satisfactory note with indorser, or by a lien upon the machines. Some of the machines were not sold by the day named, and the agent gave his note to cover the price of these, but without an indorser. Later the note was renewed, and a paper was executed by the agent stating in effect, that title to said machines did not pass from the original owner, until the note or notes were paid. A sheriff levied execution upon the machines in the agent's possession and sold same, after which the original vendor sued such sheriff in conversion to recover their value.

Held: Title had not passed to the agent, that the sheriff was not a bona fide purchaser of the machines and the original owner could recover. Nash v. Weaver, 23 Hun. 513.

The contents of a grocery store in Brooklyn were sold under conditional sale contract (contract in full in opinion). It was provided in substance that title to such goods should not pass until paid for in full; that such goods as were sold should be replaced with others, and that the proceeds of all sales should be paid over by vendee to vendor until the debt was settled in full. This contract was never filed for record, and the property covered by it was levied upon under execution secured against the vendee. The original vendor brought action against the officer who levied such execution to recover possession of the articles in question. The main point at issue was as to whether or not, under such an agreement, there was necessity for its having been filed as against an execution creditor. It was held that the contract was a conditional sale; that no filing thereof was required as against an execution creditor of the vendee, for which reason the original vendor could recover. Judgment at the trial had been in favor of the defendant and this judgment was reversed. (Legal Status, see New York, A.). Fennikoh v. Gunn, 59 A. D. 132, 69 N. Y. S. 12.

Under an agreement called a consignment cigars were furnished by a wholesaler to a retailer. This contract obligated the retailer to pay for the cigars which were shipped to him. All accounts for sales made by the retailer were to be the property of the wholesaler until all goods were paid for by the retailer, at the prices which had been mutually agreed upon under this contract. A quantity of cigars were delivered to the retailer and all were sold. A controversy existed between the parties concerning a prior indebtedness and it became necessary to bring an action to enforce payment. In this action a consideration of the contract in question was made by the court and it was held to be a conditional sale agreement and not a consignment. No rights of third parties intervened and the holding was that the wholesaler became entitled to receive pay-

ment for the balance due him. Smith v. Williams, 90 A. D. 507, 85 N. Y. S. 506.

Conditional Sale Contract with Retailer Invalid as to Third Parties.

The owner of a store used for the purpose of conducting a liquor business arranged with a tenant whereby such tenant was to have possession of the store and fixtures. The said fixtures were not to become the property of the tenant until paid for. In this store was a stock of liquors and said stock was passed over to the tenant under an agreement that title thereto should remain in the original owner until paid for. The tenant was, however, to have the privilege of selling such liquors in the ordinary course of trade. After this arrangement had gone into effect and the tenant was in possession of all the property above described, an attachment issued against him was levied upon all the fixtures, and upon the balance of the liquors which remained unsold. Later on a judgment in such attachment suit was rendered and execution issued, levy made and the property advertised and sold. Thereafter the original owner of the fixtures, and the liquor, brought action against the officers and others so executing the court mandates to recover damages. It was held he could recover for the store fixtures as title to these had never passed to the tenant. (At this time, 1875, conditional sale contracts were not required to be filed). As to the stock of liquors in question it was held that an attempt had been made to transfer these to the tenant by a conditional sale contract, and this transfer being to a retailer for the purpose of sale in the ordinary course of trade was void, wherefore the seizure and sale of such liquors was valid. Recovery was allowed for the value of the fixtures with damages for seizing same, but a recovery was denied as to the liquors in question. Devlin v. O'Neill, 6 Daly 305; Affirmed without opinion, 68 N. Y. 622.

Action was brought against a sheriff to recover for the value of wagons which he had seized and sold under execution. These wagons had been shipped by a wholesaler to a firm sell-

ing wagons at retail. It was provided that where wagons were sold for cash retailers were to pay for same at once, and if sold on time, where notes were taken these notes were to be indorsed by the retailers and forwarded at once to the wholesalers. The retailers agreed to keep the wagons insured and it was further provided that on all wagons remaining unsold after twelve months from date of invoice, these were to be paid for by the retailer. The court directed a verdict for the defendant on the theory that the whole transaction constituted a purchase by the retailers from the wholesalers and did not create an agency to sell on a commission; that title to the wagons had passed to the retailers, and the wholesaler had no title or rights thereto. This judgment was affirmed on appeal establishing the fact that such goods having been shipped by a wholesaler to a retailer for sale in the ordinary course of trade, then an instrument such as this which did not evidence a consignment was of no force or effect as against the execution creditors of the retailer. Fish v. Benedict, 74 N. Y. 613.

At a time when conditional sale contracts were not required to be filed in New York for any purpose, certain liquors were delivered by a wholesaler to a retail dealer. It was agreed the retailer should have the right to sell such liquors in the ordinary course of trade, and it was further provided that the liquor in question should remain the property of the wholesaler until paid for in full. A portion of such liquors were sold by the retailer in the ordinary course of his business. The balance was levied upon under execution against him, and the wholesaler brought an action in trover against the constable who had made the levy. By such action the wholesaler sought to recover the value of the liquors which had been levied upon. The main defense rested upon the principal, that as all the liquors delivered had been placed with the retailer for the purpose of selling in the ordinary course of trade, the retention of title therein was a fraud upon the creditors of the retailer. That under such contract absolute title had passed to the retailer, so far as execution creditors were concerned, and even though a portion of

the liquors had not been sold the wholesaler was not entitled to recover their value from the constable under the facts.

Held: This defense was valid as the transaction did not constitute a consignment, but did evidence a conditional sale contract. It was stated that as to all those liquors which had been sold to third persons, title had passed to such third persons, and as to the liquors which remained, the attempt, under such circumstances, to retain title in the wholesaler was fraudulent and made the contract of conditional sale void. A recovery under such circumstances as against the constable was denied. Ludden v. Hazen, 31 Barb. 650.

Where a delivery of liquors had been made by a wholesaler to a retailer and not paid for, a portion of said liquors was sold by the retailer, after which an execution against the said retailer was levied upon the balance. The wholesaler thereafter brought action against the officer executing the execution and joined also the person in whose favor the execution attachment had been entered. There was introduced in evidence a written instrument, which on its face indicated an absolute sale. The plaintiffs claimed the right to give parole evidence explaining this instrument with the object of showing that the liquors were in fact delivered under an agreement whereby title thereto was retained in the wholesaler until paid for.

Held: Such evidence could not be received and further that even though it were admitted, its effect would be to establish the transaction as a conditional sale, which would be of no force or effect as against an execution creditor of the retailer. The plaintiff was non-suited at the trial and this judgment was affirmed upon appeal. Bonesteel v. Flack, 41 Barb. 435.

A hotel keeper at Coney Island sold his business to another and at the time of such transfer, the seller had in his possession three barrels of whiskey. The new purchaser of the business agreed to keep this liquor and to sell therefrom such amounts as his trade called for. When sales had been made he promised and agreed to pay for such liquor as was

used. The balance of the liquor was to be and remain the property of the original owner. Under such circumstances, one barrel or a little more of the whiskey was sold by the new purchaser, the balance was levied upon under execution issued against the said new proprietor, and while this liquor was in possession of the officer under said levy, the original owner brought replevin action against him to recover possession.

Held: The facts concerning the transfer of this liquor constituted a conditional sale agreement between the original owner of the hotel and the person who bought said hotel from him; that as the liquor was to be sold by a retailer in the ordinary course of trade and a portion of it had been so sold, therefore the whole transaction was fraudulent as to creditors of the conditional vendee, for which reason the action in replevin against the officer could not be maintained. Cook v. Gross, 60 A. D. 446, 69 N. Y. S. 924.

An agreement was made between a wholesale flour dealer and a baker, whereby flour was placed in the possession of the baker in quantities. The baker was to have the right of using from such stock of flour, from time to time, such amounts as he needed in the conduct of his business. The title to such flour was to remain in the wholesaler until used and such portions as were used were to be paid for at once after such use. The contract was to cover all future deliveries, and a copy of said contract was properly filed. Fifteen barrels of such flour were levied upon in the hands of the baker, under an execution issued upon a judgment against him. The wholesaler replevined this flour from the officer who made the levy and from a judgment in favor of plaintiff defendant officer appealed.

Held: The judgment must be reversed, as a conditional sale contract could not cover future deliveries of property not in being, but each quantity so delivered must be the subject of a separate instrument. Further, it was held the flour was to be used by the baker for consumption in the regular course of his business, which made the contract void. It was stated, however, that a conditional sale contract, not invalid for other

reasons would be valid as against judgment creditors. (Legal Status, see New York, A.). Scherl v. Flam, 129 A. D. 561, 114 N. Y. S. 86.

This case was later appealed twice with the result, that the officer was declared to have made a valid levy and the wholesaler was not entitled to recover. 133 A. D. 274, 117 N. Y. S. 654, 136 A. D. 753, 121 N. Y. S. 522.

See also, Sanitary Carpet Cleaner v. Reed Mfg. Co., 159 A. D. 587, 145 N. Y. S. 218.

Conditional Sale Contract to Retailer Void as to Trustee in Bankruptcy.

Woolen cloth in bolts was sold to a retail merchant in New York for the purpose of being again sold by him in the usual course of trade. Title thereto was retained in vendor until paid for or sold, and the retailer was liable for the price of all goods received by him unless the wholesaler at its option saw fit to repossess some portions thereof. Some of these goods were sold in the usual course of trade, and a quantity remained on hand when such retailer was declared bankrupt. Vendor petitioned for return of the goods still on hand, and it was held, as the cloth had been delivered under conditional sale contract to a retailer for the purpose of resale in the usual course of trade, therefore title absolute had passed to him so far as his creditors were concerned, that a trustee in bankruptcy represented the creditors, and no recovery by the original vendor could be allowed. In re: Howland, 109 Fed. 869.

Certain goods in the way of shirts and collars were delivered to bankrupt under the agreement, title should remain in vendor until property was paid for. After the adjudication in bankruptcy vendor filed petition for the balance of this stock of goods on hand. The facts do not show any written contract between parties. The case was decided by the District Court in favor of the petitioner's contention, but the Circuit Court said the transaction was fraudulent on its face, in that an attempt

was made to retain title to the goods, a portion of which at least, the vendor knew from the nature of the business conducted by the vendee, were to be sold and disposed of. It was therefore held, on account of the effect of such fraud, that vendors could not recover the balance of property still in possession of the bankrupt, and which had passed to his trustee. This statement was made in the opinion. "When the property is delivered to vendee for consumption, or sale or to be dealt with in any way inconsistent with the ownership of the seller, or is to be destroyed, his right or lien on property transferred cannot be upheld as the conditional sale is fraudulent upon the creditors of the vendee." In re: Garcewich, 115 Fed. 87.

Buggies were delivered in New York to a retail dealer therein for the purpose of resale. The contract retained title thereto in the original owner until paid for, or sold, and in case of sale the merchant was to hold all proceeds in trust until the purchase price of all the wagons delivered to him was paid in full, and he was obligated to make such payment. This contract was not filed, and when the retailer became bankrupt several of the buggies were still in his possession unsold. Petition was presented to the bankruptcy court asking for return of such buggies, and the relief was denied upon the ground, that an attempt to retain title in goods placed with a retailer for sale in the usual course of trade, where the merchant is obligated to pay therefor, is void as to the trustee in bankruptcy of such retailer. This rule was stated to apply even though the contract was filed as provided by New York law. In re: Carpenter, 125 Fed. 831.

Buggies were delivered in New York by a manufacturer to an individual and title thereto was retained in the manufacturer until paid for. It was further provided in substance, and it was so understood by the parties, that such buggies might be sold in the regular course of trade by the individual, and that all buggies on hand, and the proceeds of all which were sold, whether in cash, notes, or book accounts, should be held as collateral security in trust for the benefit of the manufacturer un-

til the full indebtedness was paid. This contract was not filed as provided by New York law, and the individual became bankrupt after having sold five of the twenty buggies delivered. Fifteen of the buggies were on hand at the time of bankruptcy and passed into the possession of the trustee. The manufacturer petitioned for return of these fifteen buggies, and the relief demanded was denied upon the ground, that as it was understood the buggies were to be sold at retail in the usual course of trade, and as the contract did not provide directly that the proceeds of all sales made should belong to and be paid over to the manufacturer until all indebtedness was paid, the contract was void as to creditors represented by the trustee in bankruptcy. Pontiac Buggy Co. v. Skinner, 158 Fed. 858.

P. ELECTION OF REMEDIES.

Property Retaken Amounts to an Election.

Where personal property had been delivered in New York City under conditional sale contract, the vendee defaulted, and vendors took possession of the property, and sold same to a third person giving a bill of sale thereof in which a covenant of title by the vendors was made. The property was not held thirty days and was not advertised, and was not sold at public auction. The amount so obtained was not sufficient to pay the debt arising under the original conditional sale contract given, whereupon the original vendors sought to have foreclosed a chattel mortgage held by them as collateral security. Action was brought to restrain such foreclosure upon the ground, that by retaking and reselling such property as had been done, the consideration for the mortgage had failed. So held. Earl v. Robinson, 91 Hun. 363, 36 N. Y. S. 178; Affirmed, 157 N. Y. 683.

Vendor Cannot Retake Property and Sue for Purchase Price.

A vendor of personal property under conditional sale contract, cannot retake possession absolutely of such property and

thereafter sue for the balance of the purchase price, nor can he counterclaim such balance in an action brought against him by the vendee for damages. Under such circumstances the consideration for such indebtedness is deemed to have failed because the conditional sale contract has been rescinded. So held in an action involving a conditional sale contract for a threshing machine. White v. Gray's Sons, 96 A. D. 154, 89 N. Y. S. 481.

A machine was delivered in New York under oral contract, with a definite date fixed upon which payment of the purchase price was to be made. The payment was not made and the parties then entered into a written contract of conditional sale for the property. Several months thereafter, the machine not having been paid for, another contract in writing was made between the same parties, stating that the machine had been bought by the vendee and would be paid for and providing for the giving of notes. It was further provided that the conditional sale contract theretofore made should continue in force. Notes were then given. Vendor sued vendee upon the second note which matured in the series, and after the action was begun took possession of said machine, sold it (does not state in what manner), and applied the avails of such sale upon two subsequent notes. These facts were brought in by supplemental pleading.

Held: There had been an election of remedies by vendor, that he had taken the property, had thereby rescinded the contract of conditional sale and could not recover. Cooper v. Payne, 111 A. D. 785, 97 N. Y. S. 863. See same case, 103 A. D. 118, 93 N. Y. S. 69; Affirmed, 186 N. Y. 334, 78 N. E. 1076; Nelson v. Gibson (discussed in New York, S.), 143 A. D. 894.

Retaking Property not Always Election.

Equitable General Providing Co. v. Potter, (discussed in New York, S.), 22 Misc. 124, 48 N. Y. S. 647; Equitable General Providing Co. v. Eisentrager, (discussed in New York,

S.), 34 Misc. 179, 68 N. Y. S. 866; National Cash Register Co. v. Coleman (discussed in New York, A.), 85 Hun. 125.

Mechanic's Lien Filed is Election.

Kirk v. Crystal (discussed in New York, L.), 193 N. Y. 622.

An automatic sprinkler system was installed in a manufacturing plant in Brooklyn, New York. Title to such fittings was retained in the vendor until paid for in full. The contract was never filed for record as provided by Section 62 Personal Property Law. The system was completely installed on November 1, 1913. On November 23, 1913, vendee gave a large real estate mortgage upon the plant, and within the time allowed by law, the vendor of the sprinkler system filed a mechanic's lien on the plant for the balance unpaid to it. The vendee thereafter became bankrupt, and the sprinkler company filed a petition asking for return of its property or payment in full. The question as to filing or non-filing of the contract of conditional sale was not considered, as it was held, the filing of a mechanic's lien upon the premises in question was an election of remedies, which precluded the said vendee from afterward claiming title under its conditional sale contract. It was however, held, that under the mechanic's lien as filed the said vendor became a secured creditor. In re: Levin, Kronenberg & Co., 220 Fed. 451; In re: Automatic Sprinkler Company of America, 220 Fed. 451.

Judgment for Purchase Price, and Mechanic's Lien Filed Constitute Election.

Shipley Construction etc. Co. v. Mager, (discussed in New York, L.), 165 A. D. 866.

Suit for Purchase Price is Election.

Where a piano had been sold under conditional sale contract in writing, a portion of the purchase price was paid in

cash and a note was given for the balance. Nothing is stated as to whether or not the contract in question was filed. The note became due and vendor brought suit upon it for the balance of the purchase price. An answer was served by the defendant, and while the action was pending the said defendant, vendee, sold the piano in question to his wife by a bill of sale in writing, which recited payment of a consideration, which was substantially the value of the piano at that date. After this bill of sale had been given, vendor discontinued the action on the note, assigned the conditional sale contract to a third person, and such assignee took immediate possession of the piano. Under such facts the wife of the original vendee brought action to recover damages for conversion of the piano mentioned. The question involved was, as to whether or not the bringing of an action upon the note by the original vendor to recover the balance of the purchase price, had been an election of remedies, which prevented either himself or his assignee from afterwards seizing the piano under the contract. It was held there had been such an election. The judgment which had been in favor of the defendant was reversed. Orcutt v. Rickenbrodt, 42 A. D. 238, 59 N. Y. S. 1008.

In an action for the possession of property conditionally sold, or its value, vendee offered to prove that prior to the commencement of such action vendor had sued to recover upon a promissory note given under the contract. This evidence was excluded and upon appeal held, such ruling was in error; for if the action for a money judgment had in fact been brought there had been an election of remedies and the suit for possession could not be maintained. Pels v. Oltarsh Iron Works, 129 N. Y. S. 371.

Indorsement of Notes is an Election and Title Passes.

In re: Rector's, (discussed in New York, N.), 220 Fed. 645.

Suit for Purchase Price not an Election.

Ratchford v. Cayuga Co. etc., (discussed in New York, L.), 217 N. Y. 565; Same effect, American Box Machine Co. v. Zentgraf, (discussed in New York, G.), 45 A. D. 522.

A power coffee mill was delivered under conditional contract of sale expressly providing that title should not pass to the vendee until "the purchase price or any judgment for the same is paid in full." An action for a money judgment under the contract was brought and judgment secured which was not paid and was not satisfied. Action was then brought for conversion of the mill and the defense was made that plaintiff had elected in its remedies by obtaining the money judgment.

Held: The contract expressly provided that title should not pass until the property was paid for in full and as the prior judgment had not been paid, the conversion action was proper and could be maintained. Hobart Electric Mfg. Co. v. Rooder, 121 N. Y. S. 274.

May Foreclose Common Law Lien.

Where property has been delivered under conditional contract of sale and the vendee defaults, the vendor may bring an action to foreclose the lien under his contract, making the party in possession of the property, as well as the vendee, parties to the action and the judgment may provide for the sale of the property, and for a deficiency judgment against the original vendee. Singer Sewing Machine Co. v. Leipzig et al, 113 N. Y. S. 916.

Where property has been sold under conditional sale agreement and there has been default, the vendor may bring action to foreclose the lien for the purchase price but cannot include an item for making repairs on the property while in the vendee's possession. Simpson Crawford Co. v. Knight, 130 N. Y. S. 236; Same effect, Crump v. Wissner, (discussed in New York, S.), 163 A. D. 47; Bloomingdale et al v. Braun, 80 Misc. 527, 141 N. Y. S. 590; Pease Piano Co. v. Fiske, 145 N.

Y. S. 978; Quattrone v. Simon, 85 Misc. 357, 147 N. Y. S. 448; Hauss v. Savarese, 87 Misc. 330, 149 N. Y. S. 938.

Q. DEFENSES AND COUNTERCLAIMS.

Breach of Warranty is a Defense.

In an action of replevin for a piano in New York a contract of conditional sale existed, and vendor, plaintiff, claimed default. Vendee interposed an answer setting up breach of warranty as a defense by way of recoupment, and also as a counterclaim, alleging his election both prior and subsequent to the commencement of such action, to accept and retain the piano thereby claiming to affirm the sale. These defenses were demurred to. It was conceded that under the common law and prior to the amendment of the Personal Property Law (Consolidated Laws, Chap. 41; Laws of 1909, Chap. 45) by Chap. 571 of the Laws of 1911, by adding thereto a new article 5 entitled "Sales of Goods," such right of counterclaim, set off, or recoupment, did not exist in this state, and further that vendee could not have maintained an independent action for damages under such facts prior to the enactment of such law. (The above is § 150, Personal Property Law).

Recoupment and set off are discussed and declared to be limited by the amount demanded by plaintiff. Counterclaim is defined and its limits stated, to be broader than recoupment or set off, and not to be confined in amount within the demands made by the complaint. Decision, that recoupment or set off are now permitted to defendant as a defense in an action of replevin under conditional sale contract, but that counterclaim is not. Peuser v. Marsh, 167 A. D. 604, 153 N. Y. S. 381; Affirmed, 218 N. Y. 505, 113 N. E. 494.

The Court of Appeals holds that breach of warranty is a defense in actions for the purchase price or for possession.

Purchaser from Vendee must Pay in Full, or is not Bona Fide.

A cash register was sold in New York under conditional sale contract which was not filed. After the vendee had been in possession for a period, he sold the register to a third person on a conditional sale contract. This person had no knowledge of the prior sale, nor of the contract which existed between the original vendor and the original vendee. After the second purchaser had paid a portion of the price which he had agreed to pay, notice was given him of the true situation, thereupon he refused to make further payments and the original vendee took the register back. Thereafter the second vendee sued the first vendee for damages, and to recover the money which he had paid. At the trial he was non-suited on the theory that as the original conditional sale contract had not been filed at the time when he made his purchase from the original vendee, therefore such sale to him was absolute and he could not repudiate it, and turn the property back and collect damages. Upon appeal this theory was not adopted, and the holding was, by a divided court, that under such circumstances a purchaser from the original vendee did not become a bona fide purchaser for value, which meant an absolute purchaser, until he paid the full purchase price agreed upon, when the sale was made to him. The judgment was reversed. Bowen v. Dawley, 116 A. D. 568, 101 N. Y. S. 878.

Party Claiming as Bona Fide Purchaser has Burden of Proof.

Cutler Mail Chute Co. v. Crawford, (discussed in New York, B.), 167 A. D. 246; Crocker-Wheeler Co. v. Genesee Recreation Co., (discussed in New York, L.), 160 A. D. 373.

Infancy of Vendee no Defense to Replevin.

Replevin was brought against an infant for a sewing machine she had purchased under a conditional contract of sale, and the defense was made that because such vendee was under age, the action could not be maintained.

Held: The action was in tort and could be maintained as against an infant. Wheeler & Wilson Mfg. Co. v. Jacobs, 3 Misc. 236, 21 N. Y. S. 1006.

R. MEASURE OF DAMAGES.

What Can be Collected on Countermand.

Ackerman v. Rubens, (discussed in New York, A.), 167 N. Y. 405.

Where a piano was to be delivered under contract called a lease which provided for payments of rent with an option to purchase, the vendee refused to accept same when tendered and refused to make the first payment. He was sued by the vendor to collect such first payment, and the contract in question was held to be a conditional sale agreement, and even though no delivery had been made, but such delivery refused although tendered, still the vendor could collect this instalment which was past due, and others as they matured. It is implied that he must at all times be ready and willing to make delivery of the piano, as it is stated he could not have the purchase price and the property at the same time. It is plain the court regarded such vendor as holding the piano in question as a trustee or agent for the vendee. (Form of Contract, see New York, B.). Grey v. Booth, 64 A. D. 231, 71 N. Y. S. 1015.

Full Price Cannot be Collected Where no Delivery.

Where a person has agreed to purchase a cash register under conditional contract of sale, and countermands and refuses to accept, the vendor's only right of action is to recover the difference between the contract price and the value of the property at the time and place of delivery or tender. The vendor cannot sue for the full contract price. National Cash Register Co. v. Schmidt, 48 A. D. 472, 62 N. Y. S. 952.

Balance Unpaid is Amount Recoverable.

Duntz v. Granger Brewing Co., (discussed in New York, L.), 184 N. Y. 595; See 41 Misc. 177.

Conversion will not Lie Where Property Stolen, Vendee is Liable for Price.

Certain jewelry which had been sold under conditional sale agreement was stolen from the vendee, and thereafter vendor made demand upon vendee for return of such property. This demand, of course, was not complied with. An action in conversion was later brought to recover the value of such property.

Held: As the property had been taken from the vendee through no fault of his, there was no conversion on his part when he failed to deliver it upon demand, and the action could not be maintained. The general rule was stated that a demand and refusal to deliver personal property did not establish a conversion, where at the time of the demand the property in question is not in existence, and that the accidental loss or destruction of an article by one lawfully in its possession is not a conversion. It was stated that an action on the contract by vendor against vendee, under such circumstances, could be maintained to collect the balance unpaid. Sternberg v. Schein, 63 A. D. 417, 71 N. Y. S. 511.

S. REPOSSESSION AND REFUND.

When default is made in payment under a conditional sale contract and the property is taken possession of, it must be held thirty days by the vendor, or his successor in interest, subject to redemption by the vendee or his successor in interest, by complying with the terms of said contract and paying the expense of storage. After the expiration of this period the property must be sold at public auction by the vendor or his

successor in interest, and at least fifteen days written notice of said sale must be given the vendee or his successor in interest in person, if he is within the county where the sale is to be held, and if not within such county, or he cannot be found therein, such notice must be mailed to him at his last known place of residence. Such notice shall state:

1. The terms of the contract.

2. The amount unpaid thereon.

3. The amount of expenses of storage.

4. The time and place of sale unless such amounts are sooner paid.

This notice may be given while the property is being held so that said sale can take place on the 31st day after repossession. It must, however, be sold at some time during the second thirty days after repossession.

If the property brings more at this public sale than the amount due on the contract together with the expenses of storage and sale, the balance must be held by the vendor or his successor in interest, subject to the demand of the vendee or his successor in interest, and notice of the amount so held must be served on the vendee or his successor either personally or by mail. If not claimed, the amount due vendee or his successor in interest must be held thirty days from the date of sale and then be deposited with the treasurer or chamberlin of the city or village, or the supervisor of the town where the sale was held, together with a copy of the notice served on the vendee or his successor in interest, also a verified statement of the amount unpaid upon the contract, expenses of storage and of sale, and the amount of such balance.

Where property is returned or taken possession of by mutual consent on failure of the vendee to perform, the necessity for resale by notice and public auction, may be waived by an agreement in writing through which the vendee is relieved of further payments, and the vendor is relieved from such resale.

This agreement cannot appear in the original contract and can only be entered into after vendee is in default and there must be a sufficient consideration running to the vendee. A promise to relieve him from further payments is such a consideration, but an additional $1.00 or more, actually paid in cash would strengthen it. Consolidated Laws Vol. 4, Personal Property Law, §§ 65-67.

Waiver in Original Contract not Valid.

Furniture was sold under a conditional contract of sale and the payments not having been made as agreed, this property was replevined by the vendor. It was held by him for more than sixty days and not sold at public auction after which the vendee sued to recover the amount paid on the contract.

Held: That he could recover less the expense of the replevin action, as such action only determined who should have possession of the property, and in no manner superseded the provisions of the statute as to notice of sale, even if such property had come into the possession of the vendor under a contract containing a provision by which the vendee expressly waived the making of a sale by the vendor as provided by the statutes. Roach v. Curtis, 191 N. Y. 387, 84 N. E. 283.

A soda fountain was sold in New York under a conditional contract of sale retaining all title in the vendor until paid for. The contract further provided in case of default and taking possession thereof by the vendor, that all sums paid under the contract should be retained by the vendor as and for the use of such property, to the date of such removal, and that no compliance with the statute (Personal Property Law, §§ 65-67), providing for sale at public auction by the vendor, after holding the property thirty days, and giving the required notice, should be necessary.

After paying nearly $1,000.00 on the contract, vendee was adjudicated bankrupt, and a trustee appointed of its property. The soda fountain was scheduled in the bankruptcy with a

statement of its having been purchased under a conditional contract of sale. The trustee in bankruptcy did not exercise control over the fountain and with his consent the vendor leased it for several months to the party who was occupying the store and continuing the business of the bankrupt. Later, the vendor actually took physical possession of the fountain, held it thirty days and then sold it at public auction (no statement in the opinion as to the giving of proper notice, but the inference would be that such notice was given), for an amount less than the balance unpaid on the contract. Action was later brought by the trustee in bankruptcy against the original vendor of the soda fountain to recover the amount paid by the vendee under the contract.

Held: The legal retaking of the property occurred when the lease to the third party was made, and not when actual physical possession was assumed, for which reason the property had not been sold at public auction as provided by the New York statute, that the waiver clause in the contract was against public policy and void. The trustee was permitted to recover the full amount of payments made with interest. Crowe v. Liquid Carbonic Co., 208 N. Y. 396, 102 N. E. 573.

Ice-cream machines were sold under conditional contract of sale and after part payment the vendee became bankrupt. The machines were offered for sale subject to the contract but no bids were received, and later the vendor took possession. The machines were then held more than sixty days and not sold at public auction as provided by New York law, after which the trustee in bankruptcy sued the vendor to recover for the estate all money which had been paid by the vendee. There had been no judicial determination of the bankruptcy court awarding possession to vendor; the machines had simply been repossessed without dissent on the part of the trustee. Vendor, defendant, claimed as a defense the waiver of the necessity of sale by a clause in the contract of conditional sale. There was no express waiver and the court gave judgment for the trustee, stating that even though a person may waive a constitutional

right, it is doubtful whether in an executory contract, such as a conditional sale, the statutory requirement of resale after default and repossession can be legally waived, as in these contracts a matter of public policy is involved. Hurley v. Allman Gas Engine & Machine Co., 144 A. D. 300, 129 N. Y. S. 14.

Resale, How Conducted.

It is a very simple matter to comply with the New York statute as to resale by the vendor after taking possession under a conditional sale contract.

1. After taking possession the property must be held thirty days.

2. When this thirty days shall have expired the property must be sold at public auction within the succeeding thirty days.

3. Fifteen days' notice must be given to the vendee in writing.

4. This notice must be served on vendee in person if he is within the county where the sale is to be held and can be found there with reasonable diligence; in case he is not within such county and cannot be found therein by reasonable search then the notice may be mailed to his last known postoffice address.

5. This notice must be given while the property is being held, but no sale can take place until after the end of the first thirty days from the time when the property was repossessed. It must, however, be sold within sixty days from the date when repossessed. At the sale vendor may bid the amount of his claim with storage and expenses of sale added. If no one bids more the property is struck off to him and his title is complete. In case a higher bid is received, then the balance after paying the above named items, must be turned over to the vendee.

6. It is usually the rule that no one appears to bid higher than the vendor's claim and by following out the above instruc-

tions absolute title to the property can be secured to the vendor and there will be no liability on his part to repay vendee any portion of the money which had been received on the contract.

NOTICE OF SALE.

To .....
Buffalo, N. Y.

Take notice that heretofore and on the 8th day of January, 1913, you entered into a contract in writing for the purchase of an iron safe under a conditional contract of sale with the Cary Safe Co., of Buffalo, N. Y., a corporation, having its principal place of business in Buffalo, N. Y. A copy of such contract is attached hereto and made a part hereof marked "Exhibit A." There remains under the contract in question past due and unpaid the sum of seventy-three and 25/100 ($73.25) dollars and the said Cary Safe Co., have incurred expenses of storage six and 75/100 ($6.75) dollars. The said safe has been taken possession of under the conditional sale contract upon your default and will be sold at public auction as provided by law on December 11, 1917, at nine o'clock in the forenoon at the Cary Safe Co.'s factory, No. 250 Chicago St., Buffalo, N. Y., unless such sums are sooner paid to the said Cary Safe Co.

Dated, November 6, 1917.

CARY SAFE COMPANY.
By.....

Can Waive Resale by Separate Agreement.

Machinery was delivered in New York under conditional sale contract and a substantial payment made. After default correspondence took place between vendor and vendee, which resulted in an agreement by which vendor took the property back, and cancelled and delivered to vendee the notes which had been given under said contract representing the balance unpaid. It was understood that all obligation for further pay-

ment was ended, and there was no collusion or fraud shown to the detriment of other creditors of the vendee. The machinery was not held for thirty days by vendor and then sold at auction as provided by § 65, Personal Property Law of New York. A receiver was later on appointed for vendee's property, and he brought action against vendor to recover all payments made upon said contract.

Held: No recovery could be had as the express agreement above outlined made between vendor and vendee, after default upon the contract, was valid and prevented an action for the penalty. Seeley v. Prentiss Tool & Supply Co., 158 A. D. 853, Affirmed, 216 N. Y. 687.

A trustee in bankruptcy sued a conditional sale vendor to recover payments made by a conditional sale vendee. It was attempted to be shown that such vendee had consented orally to the retaking of the property in question, and thus had waived the necessity for holding the property thirty days, giving fifteen days' notice and making a sale at public auction. The evidence to prove such facts was excluded, and upon appeal held, such evidence was not material as such an agreement even if made would not have constituted a waiver of the statute. It was stated that where default has been made under conditional sale contract, and vendee and vendor enter into a new contract permitting vendor to take possession, and agreeing that no resale shall be necessary, under § 65 of the New York Personal Property Law; then if there shall have been a valid legal consideration passing to the vendee for said promise, the waiver would be enforceable, and no resale under the statute would be necessary. Adler etc. v. Weis & Fisher Co., 218 N. Y. 295, 112 N. E. 1049.

Where a vendee has voluntarily surrendered the property he held under conditional sale contract, upon the ground that it was not worth the amount then unpaid, he cannot thereafter recover the payments he made, by reason of the fact that the vendor failed to sell the property as required by statute. This

is true if the sums paid amounted to no more than the fair rental value of the property, while used by the vendee. So held, in an action to recover all the money which had been paid under a contract of lease with option to purchase, where a considerable number of the installments had been paid, after which vendee defaulted and consented to the vendor's taking the property. It was not sold by vendor after being held 30 days and the proper notice given. Fairbanks v. Nichols & Others, 135 A. D. 298, 119 N. Y. S. 752.

Where a conditional sale vendee corporation had become bankrupt, the president of such corporation consented orally to the property being repossessed by the vendor, and sold by it at private sale to another corporation. The trustee of the bankrupt brought action to recover all the money paid in by the vendee, or in case that relief should be denied then for the balance realized by the original vendor upon its private sale, over and above the debt owing to it on the contract.

Held: There had been a waiver of resale at public auction, and the full amount of payments could not be recovered, but the surplus could be recovered. There was no definite evidence before the court to determine this amount and the case was sent back for a new trial to ascertain it. Leonard v. Montague, 155 A. D. 506, 140 N. Y. S. 562; Boschen v. Multicolor Sales Co. Inc., 163 N. Y. S. 202. See also, Nyboe v. Doll & Sons, 167 A. D. 225; 152 N. Y. S. 650; Cee Bee Cee etc. Co. v. Borenstein, 164 N. Y. S. 703.

When Demand not Necessary before Repossession.

Gibbons v. Luke (discussed in New York, J.), 37 Hun. 576.

When Demand Necessary before Repossession.

The vendee of a piano under conditional sale contract in New York was in default and when about to lose the instrument by repossession, went to the vendor's office and there an

arrangement was made whereby vendee paid $10.00 on the amount remaining and secured extension. Later on vendor not having received further payment as agreed took possession of the piano, and on the same day vendee tendered the balance unpaid on the contract. Later vendee brought action against vendor to recover damages for conversion of such piano, claiming that the extension of time granted when the $10.00 was paid had not expired, and even if it had, there had been no demand for payment in full before the instrument was repossessed.

Held: Under such circumstances, that vendor had waived the forfeiture which occurred when default under the original contract was made, and that he must make proper legal demand for payment in full before taking possession. On this trial it was established that the jury had taken as the measure of damages to the vendee, the value of an old piano which had been traded in, together with the full amount of payments which had been made by the vendee. This rule of damages was stated to be wrong, and such vendee, if entitled to recover at all, should receive the value of the new piano on the day and date when it was repossessed with interest to the day when the verdict was rendered. (Payment, Extension and Trade, see New York, J.). Cunningham v. Hedge, 12 A. D. 212, 42 N. Y. S. 549.

When Vendor Liable for Personal Injuries Inflicted in Retaking.

An action for damages was brought in New York by a vendee under conditional sale contract, where an agent of the vendor injured her seriously when taking possession of the machine. The action in question was against the original vendor, and the defense was to the effect that the agent in question, was merely a collector of the installments falling due under the contract, that he had no authority whatever to take possession of the machine, and therefore the vendor could not be held liable in as much as the agent was acting outside of his authority. The

verdict had been for plaintiff at the trial, and the judgment so entered, and the order denying a new trial, were reversed upon appeal for the reason stated above. It seems to have been clearly intimated from the reasoning used in this opinion, that if this agent of the vendor had been clothed with authority to take this machine, and if upon resistance under such circumstances, he had committed the assault in question, then the vendor company would have been liable for damages. Feneran v. Singer Mfg. Co., 20 A. D. 574, 47 N. Y. S. 284.

Vendee can Recover full Amount Paid.

Where goods held under conditional contract of sale are retaken by the vendor, and not sold at public auction within sixty days as provided by statute, even though the contract is in the form of a lease and the payments were called rent, the vendee can recover the amount paid in and the vendor is not entitled to even a reasonable compensation for use of the property while in vendee's possession. (Form of Contract, see New York, B.). Hoffman v. White Sewing Machine Co., 123 A. D. 166, 108 N. Y. S. 253.

Vendee Cannot Recover Full Amount Paid.

Action to recover full amount paid in upon a conditional sales contract covering several articles of personal property. Vendee recovered for the amount claimed, but such judgment was reversed upon the theory that it was not shown at the trial that all the property included in such contract had been repossessed, and further as vendee by express agreement was liable for all damage to such property, aside from ordinary wear and tear, proof should have been permitted as to such damage if any existed. Rindone v. Hamlin's, Inc., 161 N. Y. S. 858; Siegel v. Rieser, 37 Misc. 684, 162 N. Y. S. 391.

Vendee May Sell his Interest.

Property was held under conditional contract of sale and the major part of the debt had been paid On the day when the balance became due the vendee made a transfer of the property to his wife. The vendor seized the property, held it thirty days and advertised it for sale. During the thirty days vendee's wife tendered to him the balance claimed to be due and something more for his expenses and this was refused. A conversion action was brought by vendee's wife against vendor.

Held: The transfer to the wife of vendee vested title in her subject to vendor's rights, and as proper tender had been made she could maintain the suit. (Legal Status, see New York, A.). Powers v. Burdick et al, 126 A. D. 179, 110 N. Y. S. 883.

Resale after Repossession must Follow Statute.

A team of horses were sold under conditional sale contract, and later on the said horses were delivered to a third person who assumed and agreed to pay the balance then remaining. This balance was not paid and the original vendor caused the horses to be seized, and they were sold by a deputy sheriff, as vendor's agent, after being held eight days. There was no compliance, in any way, with the conditional sale law requiring that property so repossessed shall be held thirty days and that fifteen days notice of sale shall be given. Upon the sale in question a certain amount was received which did not equal the balance unpaid on the contract. This sum was added to the sum which had been paid in on the contract. A certain amount for expenses of the sale by the deputy sheriff was added to the balance on the contract, and the difference between these two sums was claimd to be the amount still due and owing to the vendor. For this sum he brought suit against the person who had assumed and agreed to pay the balance on such contract.

The defense was made that as the property had been taken back, the contract had been rescinded and no recovery could be

had. This defense was held valid on the ground that under conditional sale agreements in New York the vendor cannot have both his property and still collect the purchase price. This decision intimated that if this property had been held thirty days and the proper fifteen days notice given, and a sale had taken place, which did not return sufficient money to pay the balance on the contract with expenses of sale, this would have been deemed a foreclosure and the original vendor could have recovered from the vendee, such balance as remained together with reasonable expenses of such sale. (Election of Remedies, see New York, P.). Nelson v. Gibson, 143 A. D. 894, 129 N. Y. S. 702.

Action not Necessary to Repossess.

Where theatre chairs had been sold and delivered in New York under conditional sale contract, there was default in payment and vendor brought replevin; but the court issuing such writ did not have jurisdiction of the action, and the chairs which had been taken by virtue thereof were returned to the vendee. Such vendee thereafter never having paid for the said chairs, and being still in default, brought action for damages and was awarded a substantial sum by the trial court. Upon appeal, held, the vendor had the right of repossession and even though the replevin writ was void, still the marshal who executed it, could lawfully take possession of the chairs as the vendor's agent under the contract, without any process of law; and the judgment was reversed. Mendelson et al v. Irving et al, 155 A. D. 114, 139 N. Y. S. 1065.

Foreclosure of Common Law Lien is not Repossession.

Where personal property delivered under conditional sale contract had been foreclosed upon and sold in pursuance to the New York City Municipal Court Act, (§ 139, Laws of 1902, Chap. 580, as amended by Laws of 1910, Chap. 542), the vendee sued to recover all payments made upon the contract.

Held: No recovery could be had as such foreclosure was not a retaking under §§ 65-66-67, Personal Property Law of New York. (Election of Remedies, see New York, P.). Crump v. Wissner, 163 A. D. 47, 148 N. Y. S. 401.

Replevin gives Possession on Day of Judgment Entered.

Personal property was replevined where default occurred under a conditional sale contract. While such action was pending and before final judgment vendor advertised the property for sale and sold it as provided by the Personal Property Law of New York. After sixty days elapsed from the entry of judgment in the replevin action, there having been no sale in the interim, vendee sued to collect all payments made.

Held: Same could be recovered, as the sale should have been within 60 days after replevin judgment entered. Spitaleri v. Brown, 163 A. D. 644, 148 N. Y. S. 1005.

Property which had been sold on conditional sale contract was taken by an officer in replevin at the suit of the vendor on a certain date. Trial was later had and judgment rendered, awarding the property to the plaintiff, the conditional vendor, the judgment was entered and the property was held by the vendor for thirty days thereafter being advertised for sale and sold within the next thirty days, the sale having taken place within sixty days from the entry of the judgment in the replevin suit. Action was brought by the original vendee to recover the amount paid under the contract, on the theory that the sale should have taken place within sixty days after the officer seized the property.

Held: The sale was valid as made, for the original vendor had no legal possession until the judgment in the replevin suit was entered. Sigal v. Hatch Co., 61 Misc. 332, 113 N. Y. S. 818.

Sale on Execution by Vendor is not Repossession.

West Publishing Co. v. Gluck, 92 Misc. 198, 155 N. Y. S. 514.

When Right of Action will Lie for Refund.

Date of Repossession, What Is.

Dryer machinery had been delivered in New York under conditional sale contract, and vendee after making the cash payment assigned his interest therein to a corporation. Such corporation made further payments, then defaulted and became bankrupt. In order to adjust complicated matters involving real estate mortgages upon property owned by the bankrupt, and in which this machinery was placed, the trustee conveyed all his right, title and interest in such machinery to the holders of such mortgages. Later the original vendors took the machinery from said buildings practically by consent of such mortgagees and shipped it to Buffalo, New York. There a sale was had, but not within sixty days after vendors started to dismantle the plant, and thereafter the persons to whom the trustee in bankruptcy had transferred his interests, the mortgagees of the real estate, sued the original vendors to recover all payments made. One of the points at issue was as to a proper sale within the time limit. Another was as to whether or not there had been such a transfer by the trustee in bankruptcy as to carry the said right of action. A third was, that even assuming the transfer to have carried the right of action, did the acts of such transferees amount to a consent that vendor might repossess, for if they did no action could be maintained. These questions had been taken from the jury at the trial and this was held error. Breakstone v. Buffalo Fdry. & Machine Co., 167 A. D. 62, 152 N. Y. S. 394; Lowy v. Hardman, Peck & Co., 176 A. D. 121, 162 N. Y. S. 461.

Can Collect Purchase Price After Repossession.

Where bicycles had been sold under conditional sale contract the vendee defaulted, and vendor took the property after the full amount became due, but held it and did not sell same either publicly or privately Suit was then brought by vendor against vendee to collect the balance unpaid, the plaintiff being

ready and willing to return the bicycles upon payment. (Election of Remedies, see New York, P.).

Held: It could recover. Equitable General Providing Co. v. Potter, 22 Misc. 124, 48 N. Y. S. 647. Same effect, Equitable General Providing Co. v. Eisentrager, 34 Misc. 179, 68 N. Y. S. 866; National Cash Register Co v. Coleman, (discussed in New York, A.), 85 Hun. 125.

When Vendee Gives Chattel Mortgage after Conditional Sale Contract, no Refund is Payable after Repossession.

Gaul v. Goldburg etc. Co., (discussed in New York, A.), 147 N. Y. S. 516.

Vendee May Transfer Right to Refund.

A conditional sale vendee in New York who had paid a portion of the purchase price for a cash register, transferred his interest in the contract to a third person and presumably delivered the register to such person. Later the vendor of such property replevined it from the third party, but failed to advertise and sell same as provided by Section 65, Personal Property Law of New York. The original vendee brought action to recover the amount he had paid upon the contract.

Held: He had transferred such right of action to the third party and could not recover. (Legal Status, see New York, A.). Steiner v. National Cash Register Co., 155 N. Y. S. 447.

Taking Property out of State Does not Relieve from Refund.

A conditional sale contract for a machine was made in New York, the machine was in Pennsylvania, and the vendor had seven days after receipt of such contract at Philadelphia, Pa., in which to cancel it. This option was not exercised, and the machine was shipped from Pennsylvania to New York and used there for a time. Later vendee defaulted after paying a considerable sum in cash and advertisements furnished. The machine was repossessed by vendor and taken back to

Philadelphia, but was never sold under Section 65 of New York Personal Property Law, which provides that it should be held thirty days, etc., and then be sold at public auction. Vendee sued vendor for the full amount paid in. Vendor set up as one defense, that the transaction constituted interstate commerce and no compliance with New York law, was required.

Held: The suit in question only incidentally affected interstate commerce and recovery was allowed. Lanston Monotype Machine Co. v. Curtis, 224 Fed. 403.

T. COMITY.

No cases found.

U. RAILROAD EQUIPMENT.

Whenever any railroad equipment and rolling stock is sold, leased or loaned under a contract which provides that the title to such property, notwithsanding the use and possession thereof by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to payment of installments, amounts or rentals payable, or the performance of other obligations thereunder, are fully complied with and that title to such property shall pass to the vendee, lessee or bailee on full payment therefor, such contract shall be invalid as to any subsequent judgment creditor of or purchaser from such vendee, lessee or bailee for a valuable consideration, without notice, unless;

1. Such contract is in writing duly acknowledged and recorded in the book in which real estate mortgages are recorded, in the office of the county clerk, or register of the county in which is located the principal office or place of business of such vendee, lessee or bailee and unless;

2. Each locomotive or car so sold, leased or loaned has the name of the vendor, lessor or bailor, or of the assignee of

such vendor, lessor or bailor, plainly marked on both sides thereof, followed by the word "owner," "lessor," or "bailor" or "assignee" as the case may be. Consolidated Laws, Vol. 4. Personal Property Law, § 61.

What is not Railroad Equipment.

Locomotives were delivered in New York under conditional contract of sale to a contracting firm and were used by them on the work they had under construction. The contract was not recorded or filed and when vendee became bankrupt the question arose on petition for repossession of such property, as to whether or not it was railroad equipment, for if so, it was conceded that the contract must have been recorded as provided by the New York law or the lien was lost as against the trustee in bankruptcy.

Held: The locomotives were ordinary personal property and as to a trustee in bankruptcy no filing was required. In order to constitute a sale of railroad equipment the sale must be to a common carrier of passengers or freight or both for hire. In re: Ferguson Contracting Co., 183 Fed. 880; Ex parte Vulcon Iron Works, 183 Fed. 880.

V. ESTOPPLE.

Estopple, What Is.

A pair of horses were sold under conditional sale contract and were delivered, but before anything had been paid upon the price one of them died without fault of either vendee or vendor. Thereafter vendee delivered vendor certain goods to apply on the contract, but not sufficient to pay for both horses. Vendor took possession of the living horse and vendee sued him to recover the full amount which had been paid upon the contract. Held he could not recover, as it was not shown that vendee had either offered to perform on his

part in full, or that vendor had so acted with reference to the live horse as to have put it beyond such vendor's power to deliver such horse upon being paid in full. The point that vendee might have been relieved of payment for one horse because the horse had died while title remained in vendor was eliminated from the case by the fact that vendee had affirmed the contract by making payments upon it after the death of said horse. Humeston v. Cherry, 23 Hun. 141.

NORTH CAROLINA.

Legal Status of Conditional Sale Contracts.

Conditional sale contracts are provided for by statute law in this state. Pell's Revisal, § 983. Brem & One v. Lockhart, 93 N. C. 191; Chemical Co. v. Johnson & One, 98 N. C. 123, 3 S. E. 723; Kornegay v. Kornegay, 109 N. C. 188, 13 S. E. 770; Singer Mfg. Co. v. Gray, 121 N. C. 168, 28 S. E. 257; Huyett et al v. Gray, 124 N. C. 322, 32 S. E. 718; Hinkle, Craig Co. v. Greene, 125 N. C. 489, 34 S. E. 554; Lance v. Butler, 135 N. C. 419, 47 S. E. 488; National Cash Register Co. v. Hill, 136 N. C. 272, 48 S. E. 637; Gresham Mfg. Co. v. Carthage Buggy Co., 152 N. C. 845, 68 S. E. 175; Standard Dry Kiln Co. v. Ellington, 90 S. E. 564; Wood etc. v. Eubank etc., 169 Fed. 929; Wood Mowing etc. Co. v. Vanstory, 171 Fed. 375.

How Executed.

They should be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Butts v. Screws, 95 N. C. 215; Puffer Mfg. Co. v. Baker & One, 104 N. C. 148, 10 S. E. 254; Wilcox Bros. v. Cherry et al, 123 N. C. 79, 31 S. E. 369.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording; but

in order to make it valid and to hold title as against creditors or purchasers for a valuable consideration from vendee, it must be registered. To entitle the contract to be registered it is necessary, either that it be acknowledged by the vendee in person, or that it be proven by one subscribing witness. Where a married woman signs and acknowledges such a contract, except for household furniture, there must be a privy examination of the woman. Pell's Revisal, §§ 979, 982, 983, 989, 996-97, 1003, 1041. Laws of 1909, Chap. 335. Laws of 1915, Chap. 215, Subdivision 2.

Recording or Filing.

In order to hold title as against creditors of or purchasers for a valuable consideration from vendee, the original contract must be registered, which in effect means recording the instrument and indexing same to the names of the parties thereto. There is no definite time within which the contract must be registered, but it should, if possible, be done before the vendee secures possession of the property. The contract is not entitled to registration, unless it shall have been duly acknowledged by vendee in person, or shall have been proven by one subscribing witness to the vendee's signature. In either event the instrument must be probated as explained in the following paragraph.

A contract of conditional sale should always be signed by one subscribing witness to the vendee's signature, and such witness may be the salesman who takes the order provided he does not also execute the contract for and on behalf of the vendor. Where this has been done and it is desired to register the contract, same may be acknowledged by the vendee in person, or it may be sent to the subscribing witness and be sworn to by him. The instrument so acknowledged or proven is then sent to the clerk of the superior court of the county in which the vendee resides, if within the state, but if such vendee be a non-resident then to the same officer of the county where the property is situated. It is the duty of this officer to examine the contract and if it has been properly executed, and acknowledged, or

proven, to attach his certificate to that effect, which is called "probating" the instrument. He will then upon request, if the proper fees are remitted to him, turn the contract, with the acknowledgment or proof and probate attached, over to the register of deeds in his county for registration. Pell's Revisal, §§ 979, 982, 983, 989, 996-97, 999, 1001-3, 1041. Laws of 1909, Chap. 335. Laws of 1915, Chap. 215, Subdivision 2.

Recording Fee.

The law provides that such contracts shall be probated and registered for the same fees as a deed of trust or chattel mortgage. Fee for probate 25 cents, fee for registration, 80 cents for the first 300 words or part thereof and 10 cents for each additional 100 words.

In Nash county the fee for registration is 35 cents on the first 300 words, or part thereof, and 10 cents for each additional 100 words on the excess.

If a statutory form is used in Durham, Guilford, Halifax, Rockham, Surry and Wake counties the fee for probating is 10 cents and for registration 15 cents. Such a contract cannot be used by the ordinary vendor because it provides that both parties are residents of the county within which the contract is taken and to be registered. Pell's Revisal, §§ 982, 983, 2773, 2776. Laws of 1915, Chap. 215, §§ 1, 2, 3. Laws of 1915, Chap. 574, § 1.

Re-Recording or Renewal.

The contract is valid for the term of three years. There is no provision for re-recording or renewal. Barrington v. Skinner et al, 117 N. C. 47, 23 S. E. 90; In re: Franklin, 151 Fed. 642.

Discharge.

There is a provision in the laws of this state for discharge of chattel mortgages and deeds of trust, from record after pay-

ment, but no penalty is provided for failure to make such discharge. There is no express provision covering conditional sale contracts, but it is always advisable upon request of vendee or any other proper party to discharge such a contract from record after payment in full has been received. Pell's Revisal, § 1046.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

Where property shall have been delivered under conditional sale agreement and is destroyed before payment in full, the loss falls upon vendee. Tufts v. Griffin, 107 N. C. 47, 12 S. E. 68; Whitlock v. Auburn Lumber Co., 145 N. C. 120, 58 S. E. 909.

Fixtures.

Where property held under conditional contract of sale is attached to a building in such a manner that it may be removed without material damage to the building or to itself, the vendor may have possession upon default; but where same becomes incorporated into the building in such a manner that its removal will cause great injury to the building, or to the property, it cannot be taken possession of. Where vendor is denied return of his property he should bring an action in equity to have the balance unpaid under his contract declared a lien upon the building itself. Clark Bros. v. Hill, 117 N. C. 11, 23 S. E. 91; Belvin v. Raleigh Paper Co., 123 N. C. 138, 31 S. E. 655; Union Trust Company v. Southern Sawmills & Lumber Co., 166 Fed. 193.

Landlord's Lien.

A landlord has no lien upon property held in his tenant's possession under conditional contract of sale. Pell's Revisal, § 1993.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such agreement, and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes, it may become necessary to record same and the notes are made non-negotiable. Bristol v. Pearson, 107 N. C. 562, 12 S. E. 451.

Election of Remedies.

No cases found.

Repossession and Refund.

That in all sales of personal property wherein the title is retained by the seller to secure the purchase money or any part thereof, and no power of sale is conferred and default is made in the payment of said obligation by the purchaser, then in all such cases it shall be lawful for the owner of such debt thereby secured, without an order of court, to sell such property or so much thereof as shall be necessary to pay off said indebtedness at public auction for cash, after first giving twenty days' notice at three or more public places in the county wherein the sale is to be made, and apply the proceeds of such sale to the discharge of said debt, interest on the same, and costs of foreclosure and pay any surplus to the person legally entitled thereto. That before making any such sale, in addition to the advertisement above required, the owner of said debt shall, at least ten days before the day of sale, mail a copy of the notice of sale to the last known post office address of the original purchaser or his assigns. Laws of 1913, Chap. 60, § 1. Puffer Mfg. Co. v. Lucas, 112 N. C. 377, 17 S. E. 174; Hamilton v. Highlands, 144 N. C. 279, 56 S. E. 929.

Railroad Equipment.

Any delivery of railroad equipment or rolling stock under conditional sale contract, lease, or bailment with option to pur-

chase, shall be invalid as to subsequent judgment creditors, or subsequent purchasers for valuable consideration, and without notice, unless the contract be in writing duly acknowledged and registered in the office of the register of deeds, in at least one county of the state in which said vendee, lessee, or bailee does business; each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor or bailor, or the assignee of such vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner," "lessor" or "bailor" or "assignee," as the case may be. Pell's Revisal, § 984.

Forms.

PROOF BY SUBSCRIBING WITNESS.

STATE OF NORTH CAROLINA, }
COUNTY OF DUNHAM. } *ss.*:

The execution of the foregoing contract was this day proven before me by the oath and examination of John Seward Davis, the subscribing witness thereto.

JOHN SEWARD DAVIS.

Witness my hand and notarial seal
this 12th day of July, 1917.

HARVEY E. ANDREWS,
Notary Public in and for ————.

{ NOTARIAL SEAL }

PROBATE.

The foregoing certificate of Harvey E. Andrews, notary public, is adjudged to be sufficient. Let the instrument together with the certificate be registered.
This 12th day of July, 1917.

HOWARD MCCOMB,
Clerk of Superior Court for Dunham County.

ACKNOWLEDGMENT BY AN INDIVIDUAL.

STATE OF NORTH CAROLINA, }
COUNTY OF DUNHAM. } *ss.*:

I, Henry Adams, a notary public in and for said state and county, do hereby certify that Willis P. Landreth personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 12th day of July, A. D. 1917.

HENRY ADAMS,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

ACKNOWLEDGMENT BY CORPORATION.

STATE OF NORTH CAROLINA, }
COUNTY OF DUNHAM. } *ss.*:

This 12th day of July, A. D. 1917, personally came before me Charles E. Rowe, a notary public, Myron L. Clark who, being by me duly sworn, says that he is the president (presiding member or trustee) of the Mineral Reduction Company, and that the seal affixed to the foregoing (or annexed) instrument in writing is the corporate seal of the company, and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Myron L. Clark acknowledged the said writing to be the act and deed of said corporation.

CHARLES E. ROWE,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

Under Chapter 335, Laws of 1909, it is provided specially that a conditional sale contract signed in the name of a corporation by its president, secretary, or treasurer, in his official capacity may be acknowledged, or proven, and ordered to registration as is provided by law for the execution, probate, and registration of deeds by natural persons. The foregoing forms would therefore apply to corporations, and any person could be the subscribing witness. A corporation vendee should always affix its corporate seal to the contract.

As to all instruments (including conditional sale contracts) where same are executed by corporations, and are to be registered, the more formal methods of proof required in this state may be used if desired.

PROOF BY A CORPORATION.

STATE OF NORTH CAROLINA, }
COUNTY OF DUNHAM. } *ss.*:

This 12th day of July A. D. 1917, personally came before me Milton R. Sweet, a notary public, Eugene A. Moore, who, being by me duly sworn says that he knows the common seal of the Mineral Reduction Company, and is also acquainted with Paul A. Large, who is the president (or presiding member or trustee) and also with George T. Lee and Dudley R. Field, two other members of said corporation, and that he, the said Eugene A. Moore, saw the said president (or presiding member or trustee) and the two said other members sign the instrument, and saw the said president (or presiding member or trustee) affix the said common seal of the said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence.

Witness my hand and official seal, this 12th day of July, 1917.

MILTON R. SWEET,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

STATE OF NORTH CAROLINA, } ss.:
COUNTY OF DUNHAM. }

This 12th day of July A. D. 1917, personally came before me Milton R. Sweet, a notary public, Fred C. Jones, who being by me duly sworn, says that he knows the common seal of the Mineral Reduction Company and is acquainted with Paul A. Large, who is the president of said corporation and that he, the said Fred C. Jones is the secretary (or assistant secretary) of the said corporation, and saw the said president sign the foregoing (or annexed) instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or by the said Fred C. Jones, secretary or assistant secretary) and that he the said Fred C. Jones signed his name in attestation of the execution of said instrument, in the presence of said president of said corporation.

Witness my hand and official seal this 12th day of July, 1917.

MILTON R. SWEET,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

STATE OF NORTH CAROLINA, } ss.:
COUNTY OF DUNHAM. }

This is to certify that on the 12th day of July, 1917, before me personally came Paul A. Large (president, vice-president, secretary or assistant secretary, as the case may be), with whom I am personally acquainted, who, being by me duly sworn, says that Paul A. Large is the president (or vice-president) and Fred C. Jones is the secretary (or assistant secretary) of the Mineral Reduction Company, the corporation described in, and which executed the foregoing instrument, that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president

(or vice-president), and the said president (or vice-president) and secretary (or assistant secretary) subscribed their names thereto, and said common seal was affixed, all by order of the board of directors, of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and official seal this 12th day of July, 1917.

JAMES R. PRESTON,
Notary Public in and for ————.

{ OFFICIAL } { SEAL. }

Officers Before Whom Acknowledgments May Be Taken.

Within the State. Judges of supreme or superior courts; clerks of supreme, superior or inferior courts; notaries public; a justice of the peace within his county.

Without the State but Within the United States. Judges and clerks of courts of record; notaries public; mayors of cities having a seal; justices of the peace, but when taken before a justice of the peace, a certificate of authority is required from the clerk of a court of record of the county in which such justice resides.

NORTH DAKOTA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Compiled Laws, § 6757. Thompson v. Armstrong, 11 N. Da. 198, 91 N. W. 39; Dowajiac Mfg. Co. v. Mahon & One, 13 N. D. 516, 101 N. W. 903; Rock Island Plow Co. v. Western Implement Co., 21 N. D. 608, 132 N. W. 351; In re: Pierce, 157 Fed. 755; In re: Farmer's Co-Operative Co., 202 Fed. 1005; In re: Farmer's Co-Operative Co., 202 Fed. 1008.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing, or recording; but in order to make it valid and to hold title as against subsequent creditors without notice, and subsequent purchasers and encumbrancers in good faith, and for value, the contract must be filed. It is not necessary that the instrument be acknowledged by the vendee, or vendor before filing, but it seems essential that the original contract should be signed by two subscribing witnesses to the vendee's signature. Compiled Laws, §§ 6757, 6758, 6763.

Recording or Filing.

In order to hold title as against the third parties above named, the contract must be duly signed by the vendee, and the original or an authenticated copy must be filed with the register of deeds in the county where the property or any part thereof is situated. No exact time is specified within which such filing must be made, but as a measure of prudence the contract should be filed immediately after its acceptance, and before vendee has possession of the goods. There is no provision for recording.

The law governing chattel mortgages provides expressly that they cannot be filed unless signed by two subscribing witnesses. The law as to conditional contracts of sale states that such contracts shall not be valid as to third parties unless in writing and indexed the same as a chattel mortgage, but does not specifically provide for the signature of any subscribing witness. For this reason many recording officers will accept and file a copy of such an instrument with but one witness' signature attached, and some will file without any witness whatsoever. There have been no court decisions as to what are the proper requirements and the question is still an open one. It would seem, however, from a fair and reasonable construction of the law that a conditional contract of sale in order to be filed must be executed in the same manner as a chattel mortgage, and this would mean that it must be signed by the vendee and by two subscribing witnesses. One of these may always be the agent of the vendor provided he does not also execute the contract for and on behalf of the vendor.

It seems very probable that a conditional contract of sale if not witnessed will have no effect as to third parties even though filed. Compiled Laws, §§ 6757, 6758, 6763.

Recording Fee.

The fee for filing a conditional sale contract is twenty-five cents. Compiled Laws, § 3511, Subdivision 9.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

It is a crime to destroy, dispose of, conceal or injure property held under conditional contract of sale, punishable as a felony if the value of such property is more than $100.00, and punishable as a misdemeanor if the value is $100.00 or less. Compiled Laws, § 10248.

Loss, Who Must Bear.

Where property has been delivered under conditional sale agreement and is destroyed before payment, then unless such contract provides otherwise, the loss falls upon the vendor. Arthur & Co. v. Blackman, 63 Fed. 536.

Fixtures.

No determination has been made as to the rights of a vendor where property held under a conditional contract of sale has become attached to a building.

Landlord's Lien.

A landlord has no lien for rent upon property located on his premises.

Notes.

No cases found.

Election of Remedies.

A vendor under conditional sale contract may upon breach thereof, by the vendee, elect to take possession of the property

covered by the contract or he may waive his title and sue for the value or selling price, but he cannot have both such remedies. Poirier Mfg. Co. v. Kitts, 18 N. D. 556, 120 N. W. 558.

Repossession and Refund.

There exists in this state no provision making it necessary that upon repossession vendor shall repay any portion of the money received. Pfeiffer v. Norman, 22 N. D. 168, 133 N. W. 97.

Railroad Equipment.

Railroad equipment and rolling stock may be delivered under conditional sale contract or lease with option to purchase, but the term may not be longer than ten years, and in order that such instrument shall be valid as to subsequent purchasers in good faith and creditors, same must be in writing duly acknowledged, and the original thereof must be recorded with the secretary of state. Each locomotive or car so sold or leased must have the name of the vendor, lessor or assignee of the vendor or lessor marked in a conspicuous place thereon followed by the word "owner," or "lessor" as the case may be.

Fees for recording 25 cents per folio. Compiled Statutes, §§ 4625, 4626, 129 Subdivision 16.

OHIO.

Legal Status of Conditional Sale Contracts.

Conditional sale contracts are provided for by statute law in this state. General Code, § 8568. Sage v. Sleutz, 23 Ohio 1; Retzsch v. Retzsch Printing Co. et al, 19 O. Cir. Ct. R. 631; Boyer v. Knowlton Co., 85 O. St. 104, 97 N. E. 137; Potter Mfg. Co. v. Arthur, 220 Fed. 843; Arthur v. Parsons Co., 224 Fed. 47.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but to make it valid, and to hold title as against subsequent purchasers, and mortgagees in good faith, and creditors, it must be deposited for filing. It is not necessary that the instrument be acknowledged by the vendor or vendee, nor that it be signed or proven by a subscribing witness to entitle it to be so deposited.

Recording or Filing.

In order to hold title as against subsequent purchasers and mortgagees in good faith, and creditors, the original contract

or a sworn copy thereof must be deposited (filed), with the recorder of the county where the person signing the instrument, if a resident of the state, resides at the time of the execution thereof, and if not such resident then with the county recorder of the county in which the property is situated at the time the contract is signed. In all instances the vendor, his agent, or attorney must make an affidavit stating the amount of the claim, and such affidavit should be printed, written, or typewritten upon the instrument which is filed whether it be the original contract or a sworn copy thereof. It is possible that such affidavit upon a separate sheet, where such sheet is attached to the contract with mucilage or other like substance, would be a compliance; but any attachment by clip, or pin or staple would make the filing illegal. No definite time of filing is provided, but in order to avoid all question, such act should be done before vendee secures possession of the property, if possible. Where vendee is a partnership copy must be filed in each county where a partner resides. General Code, § 8568. Call v. Seymour, 40 O. St. 670; National Cash Register Co. v. Closs, 12 O. Cir. Ct. R. N. S. 15; Remington & Son v. Central Press Association Co., 13 O. Cir. Ct. R. 542; In re: Sheets, etc., 136 Fed. 989; Unitype Co. v. Long, 143 Fed. 315; Cincinnati Equipment Co. v. Degnan, 184 Fed. 834; Du Pont Powder Co. v. Jones Bros., 200 Fed. 638; Arthur v. Parsons Co., 224 Fed. 47.

Recording Fee.

The fee for filing each instrument is six cents; for searching each paper six cents; for making index entries upon the filing of each paper six cents for each party thereto. If twenty-four cents is sent it is usually accepted by the filing officer, where there is but one vendor, and one vendee. General Code, § 8572.

Re-Recording or Renewal.

There is no provision for refiling such a contract and same is valid for the term of fifteen years. General Code, §§ 11221-

11224. National Cash Register Co. v. Farmers Natl. Bk., 31 Wkly L. B. 114.

Discharge.

There is no provision for discharge of such an instrument after payment, and no express penalty for failure to discharge. It is always, however, advisable upon request of the vendee or any other proper party, to discharge such a contract from record after payment in full has been received.

Criminal Liability of Vendee.

Whoever with intent to defraud, sells, secretes, destroys, converts to his own use, or otherwise disposes of chattels, goods, merchandise, or personal property, the possession of which has been given to him in trust, pledge, bailment, or on deposit, or under an agreement to purchase it on installment payments or otherwise; and any person so holding such property who with intent to defraud, removes it beyond the county wherein it is stipulated such property shall be kept, shall be fined not more than $500.00, or imprisoned not more than three months or both. General Code, § 12475.

Loss, Who Must Bear.

No cases found.

Fixtures.

When the payments on a conditional contract of sale fail, and the property held under such contract has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the courts of this state have decided that the vendor is entitled to possession. If, however, the property has been so attached to the building as to become a material part thereof, and incapable of being removed with-

out great injury to the building or to itself, the property cannot be taken possession of and the vendor's remedy is by action in equity to have the amount unpaid charged as a lien against the building itself. Case Mfg. Co. v. Garven, 45 O. St. 289, 13 N. E. 493; In re: Superior Drop Forge & Manufacturing Co., 208 Fed. 813.

Landlord's Lien.

There is no provision of law giving the landlord a lien for rent upon property located on his premises.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such contract and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes, it may become necessary to record same and the notes are made non-negotiable. Arthur v. Parsons Co., 224 Fed. 47.

Election of Remedies.

A vendor under conditional sale contract cannot have both a money judgment for the price and later a return of the property, in case such judgment is not paid. Retaking of the property would also operate as an election and prevent suit for the balance unpaid. A vendor can foreclose his common law lien in this state and cause the property to be sold for the purpose of paying the balance remaining. Albright v. Meredith, 58 Ohio St. 194, 50 N. E. 719; In re: National Cash Register Co., 174 Fed. 579.

Repossession and Refund.

Where the vendor takes possession of the property under conditional contract of sale because of failure on the part of

the vendee to perform his contract and the amount paid by the vendee exceeds twenty-five per cent. of the contract price, the vendor must tender back the money so paid after deducting therefrom a reasonable compensation for the use of the property. This compensation shall in no case exceed 50 per cent. of the total amount paid by the vendee unless the property has been broken or actually damaged, when a reasonable compensation for such breakage or damage may also be deducted.

If the property is taken possession of by the vendor without tendering the prescribed amount he is guilty of a misdemeanor punishable by a fine of not more than $100.00.

The regulations stated above do not apply where the property in question is machinery equipment and supplies for railroads or contractors, or for manufacturing brick, cement and tiling, or for quarrying and mining purposes, in such case no repayment is necessary upon repossession.

By foreclosing the common law lien all necessity for refund is obviated. General Code, § 12464. Speyer & Co. v. Baker, 59 O. St. 11, 51 N. E. 442; National Cash Register Co. v. Cervone, 76 O. St. 12, 80 N. E. 1033; Chicago Cottage Organ Co. v. Crambert, 78 O. St. 149, 84 N. E. 788; Croneis Bros. v. Toledo Computing Scale Co., 89 O. St. 168, 106 N. E. 5; Goodman v. Manning, 5 O. Nisi P. 94; Gavanaugh v. Bloom et al, 8 O. Nisi P. 6; Caldwell v. Singer Sewing Machine Co., 7 O. Cir. Ct. R. 460, Aff'd 35 Law Bull. 379; Chicago Cottage Organ Co. v. Biggs, et al, 22 O. Cir. Ct. 392; Metropolitan Tr. Co. v. R. R. Equipment Co., 108 Fed. 913; In re: National Cash Register Co., 174 Fed. 579; Arthur v. Parsons Co., 224 Fed. 47.

Railroad Equipment.

Railroad equipment or rolling stock, or other personal property to be used in or about the operation of a railroad, may be delivered under conditional sale contract or lease with option to purchase; but in order that same shall be valid as against

creditors, or innocent purchasers for value, the contract must be in writing, and the original or a copy thereof recorded or filed with the secretary of state.

The provisions above stated shall apply not only to contracts made with a railroad company, as vendee or lessee, but also to all contracts which may be made with any corporation, company, or person as vendee or lessee, by which such corporation, company, or person undertakes to purchase rent, lease, or hire railroad equipment, cars, rolling stock, or other personal property, designed for use on, or in connection with a railroad or railroads in this or other states.

Fees for filing $1.00.

Fees for recording 20 cents per folio. General Code, §§ 9060-9063, 176 Subdivision 17. Ky. Contracting & Building Co. v. Continental Trust Co., 108 Fed. 1; Metropolitan Tr. Co. v. R. R. Equipment Co., 108 Fed. 913.

Forms.

AFFIDAVIT FOR FILING WHERE VENDOR IS NOT A CORPORATION.

STATE OF OHIO, }
COUNTY OF CLERMONT. } *ss.*:

Robert B. Thompson, being duly sworn, says he is the vendor (1) named in the written contract, a copy of which is hereto attached; that of the amount specified to be paid for the safe described in said contract, there is unpaid the said vendor the sum of $95.00.

ROBERT B. THOMPSON.

Subscribed and sworn to before me
this 12th day of July, 1917.

STEPHEN H. SPOTTS,
Notary Public in and for ————.

(1) Affidavit may be made by the agent or attorney of vendor.

AFFIDAVIT FOR FILING WHERE VENDOR IS A CORPORATION.

STATE OF OHIO,
COUNTY OF BUTLER. } *ss.*:

Osborn D. Reilly, being duly sworn, says he is agent (2) for the Cary Safe Company, a corporation, the vendor named in the written contract, a copy of which is hereto attached; that of the amount specified to be paid for the safe described in said contract there is unpaid the said vendor the sum of $225.00.

OSBORN D. REILLY,

Subscribed and sworn to before me
this 12th day of July, 1917.

WALLACE R. MACKIE,
Notary Public in and for ————.

Officers Before Whom Acknowledgments May Be Taken.

Within the State. The judge or clerk of any court of record; any probate or police judge; county auditors; county surveyors; notaries public; justices of the peace.

Without the State but Within the United States. Commissioners appointed by the governor. Also any acknowledgment in conformity with the laws of the state where taken, is valid in Ohio.

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(2) Affidavit may be made by any authorized officer, attorney or agent of the corporation.

OKLAHOMA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Revised Laws, § 6745. Central Loan & Trust Co. v. Campbell Commission Co., 5 Okl. 396, 49 Pac. 48; McIver et al v. Williamson et al, 19 Okl. 454, 92 Pac. 170; Akin v. Baldwin Piano Co., 162 Pac. 221; In re: Columbus Buggy Co., 143 Fed. 859; Peoples Electric Ry. Co. v. McKeen Motor Car Co., 214 Fed. 73.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto, without acknowledgment, or proof, or filing, or recording; but in order to make it valid, and to hold title as against innocent purchasers from, or creditors of vendee, there must be a filing. It is not necessary that the contract be acknowledged by the vendee or vendor, nor that it be either signed or proven by a subscribing witness, or witnesses to the vendee's signature, in order to be so filed. Revised Laws, § 6745. Grenville etc. Bank v. Evans et al, 9 Okl. 353, 60 Pac. 249; Shafer v. Natl.

Cash Register Co., 16 Okl. 117, 82 Pac. 646; Twitchell Co. v. 1st National Bk. of Lawton, 18 Okl. 375, 90 Pac. 14.

Recording or Filing.

There is no provision for recording conditional contracts of sale in this state. Filing is, however, required to hold title as against innocent purchasers from or creditors of the vendee, and the original contract duly signed by vendee, or a true copy thereof must be filed with the register of deeds for the county where the property or any part thereof is situated. Where such property is situated in a portion of the state attached to an organized county for judicial purposes, the instrument must be filed in the office of the register of deeds for such county. No exact time is specified within which the contract must be filed, but in order to avoid all question, this should be done immediately after the contract is accepted, and before vendee has possession of the property. No witnesses are required. Revised Laws, §§ 4031, 4032, 4035, 4036, 6745. Smith Premier Typewriter Co. v. Grace, 28 Okl. 844, 115 Pac. 1019; Moneyweight Scale Co. v. Hale Halsell Gro. Co., 156 Pac. 1187; In re: Johnson, 212 Fed. 311.

Recording Fee.

The fee for filing and indexing a conditional sale contract including the certificate of having done so, is twenty-five cents. Revised Laws, § 3204.

Re-Recording or Renewal.

Where property covered by conditional sale contract is moved into this state, or is removed from one county to another within the state, any previous filing of the contract shall not operate as notice against subsequent creditors, purchasers, mortgagees, or incumbrancers, for a longer period than 120 days after such removal; but a copy of such contract must

be refiled with the register of deeds for the county to which the chattel is removed, and in which it is permanently located.

The law as to chattel mortgages requires that same shall be renewed within 30 days immediately preceding the end of three years from the previous filing. The conditional sale law provides that such contracts shall be filed, and states that when so filed the law applicable to chattel mortgages shall apply. This leaves the question of renewal in doubt, and as there has been no court decision upon the point, prudence advises refiling. The method of such renewal if to be made, is by filing a copy of the contract with the register of deeds for the county in which the vendee then resides, and in like manner each three years thereafter. To the copy of contract in each instance, must be attached a statement of the amount of the existing debt for which the vendor or his assigns claims a lien, subscribed and sworn to by such party, his agent or attorney. Fee for refiling is twenty-five cents. (The Author's opinion is that no refiling of a conditional sale contract is necessary and same is valid for the term of five years). Revised Laws, §§ 3204, 4032, 4035. National Cash Register Co. v. Paulson, 16 Okl. 204, 83 Pac. 793.

Discharge.

There is provision for discharge of a chattel mortgage after payment in full, and penalty for failure to comply; but conditional sale contracts are not required to be discharged or satisfied after payment. Revised Laws, §§ 4037, 4043.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

A vendor under conditional sale agreement having made an absolute promise to pay is not relieved because the property is injured or destroyed. Harley & Willis v. Stanley, 25 Okl. 89, 105 Pac. 188.

Fixtures.

Where property delivered under conditional sale contract has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the courts of this state have decided that the vendor is entitled to possession upon default. Where the property has been so attached to a building as to become a material part thereof and where same cannot be removed without great injury to the building or to itself, the property cannot be recovered in specie, but it is probable that a lien for the balance unpaid can be enforced against the building in an action of equity. Great Western Mfg. Co. v. Bathgate et al, 15 Okl. 87, 79 Pac. 903; Lawton etc. Tile Co. v. Ross Kellar etc., 33 Okl. 59, 124 Pac. 43.

Landlord's Lien.

A landlord has no lien for rent on property located upon his premises.

Notes.

No cases found.

Election of Remedies.

A vendor cannot have both the property and payment. If he shall sue for the purchase price, that act is an election, and the converse would undoubtedly be true—that taking back the property would operate as a release to the vendee. Osborne & Co. v. Walther, 12 Okl. 20, 69 Pac. 953.

Repossession and Refund.

There is no provision of law in this state making a vendor liable for any refund upon repossession. McCormick Harvesting Machine Co. v. Koch et al, 8 Okl. 374, 58 Pac. 626; Scott v. Vulcan Iron Works, 31 Okl. 334, 122 Pac. 186.

Railroad Equipment.

Where railroad or street railway equipment or rolling stock is delivered on conditional sale contract or lease with option to purchase the instrument must be in writing, and in order to be valid as to subsequent bona fide purchasers for value and without notice it must be acknowledged by the vendee or lessee or bailee, or be proved as deeds of real estate are required to be proved; and be then recorded in the office of the secretary of state. Also each locomotive, engine or car so sold, leased, or hired shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word owner" or "lessor" or "bailor" as the case may be. When paid for in full the contract may be discharged by recording with the secretary of state a written declaration to that effect acknowledged by the vendor, or lessor, or bailor or his or its assignee. A written declaration in like effect may be made by the vendor, or lessor, or bailor or his or its assignee, on the margin of the record, duly attested by the secretary of state.

Fees to the secretary of state are $2.00 for recording such contract, or such declaration and $1.00 for noting declaration of discharge on the margin of the record. Revised Laws, §§ 1391, 1392.

OREGON.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are regulated by statute law where the property involved becomes thereafter so attached to real estate as to become a fixture thereon. As to ordinary personal property not so attached the common law rule prevails, and same are valid as to all third persons. Lord's Oregon Laws, § 7414. Singer Mfg. Co. v. Graham et al, 8 Ore. 17; Christenson v. Nelson, 38 Ore. 473, 63 Pac. 648; Herring etc. Co. v. Smith, 43 Ore. 315, 72 Pac. 704; International Harvester Co. v. Bauer, 162 Pac. 856; In re: Rasmussen's Estate, 136 Fed. 704; Meier & Frank Co. v. Sabin, 214 Fed. 231; In re: Roellich, 223 Fed. 687.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as to all parties without acknowledgment or proof or filing or recording, except where the property involved becomes thereafter so attached to real estate as to become a fixture thereto. No witness is required in any event.

Recording or Filing.

Where the contract covers ordinary personal property which does not thereafter become so attached to real estate, as to make it a fixture, then no recording or filing is necessary. In case the property does thereafter become so attached to real estate as to make it a fixture, it shall be void as to any purchaser, incumbrancer or mortgagee of such real estate, unless within 10 days after such attachment a memorandum of such sale stating its terms and conditions, together with a brief description of said personal property, so as to identify it, and signed by the vendor and vendee (the original contract) with a notice endorsed thereon or attached thereto, signed by the vendor or his agent describing such real property, shall be filed in the office of the county clerk, or recorder, of the county where such property and real estate shall be situated. Lord's Oregon Laws, § 7414. Maxson v. Ashland Iron Works, 166 Pac. 37.

Recording Fee.

Fees for filing and indexing twenty-five cents. Lord's Oregon Laws, § 7415.

Re-Recording or Renewal.

There is no provision for re-recording or renewal and the contract is valid for the term of six years.

Discharge.

Such contracts must be discharged after payment in full, upon demand and tender of the reasonable charges therefor; and a refusal or neglect for the space of 10 days, to so discharge renders the vendor, or his personal representative or assignee liable to a penalty of $100 and all actual damages. The satisfaction may be made upon the margin of the record duly attested

by the county clerk or recorder or his deputy; or a written certificate of satisfaction duly acknowledged or proved may be recorded. Fees for recording ten cents per folio (100) words. Fees for noting satisfaction on the margin of the record twenty-five cents. Lord's Oregon Laws, §§ 3109, 7137, 7138, 7141, 7405, 7415.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where property held under conditional contract of sale is attached to a building in such a manner that it may be removed without material damage to the building or to itself, a vendor is entitled to possession. If however, it cannot be removed without great damage to the building or to itself, and thus becomes an irremovable fixture, the vendor's remedy would be an action in equity to charge the balance unpaid on his contract as a lien upon the building itself. Henkle v. Dillon, 15 Ore. 610, 17 Pac. 148; Landigan v. Mayer, 32 Ore. 245, 51 Pac. 649; Blanchard v. Eureka etc. Co., 58 Ore. 37, 113 Pac. 55.

Landlord's Lien.

A landlord has no lien for rent against property located on his premises.

Notes.

No cases found.

Election of Remedies.

Where two or more remedies exist under conditional sale contract, and vendor seeks to enforce one of them, the others are deemed to be waived. Rosendorf & One v. Baker, 8 Ore. 240; McDaniel v. Chiaramonte, 61 Ore. 403, 122 Pac. 33; Francis v. Bohart, 76 Ore. 1, 147 Pac. 755.

Repossession and Refund.

No cases found.

Railroad Equipment.

Conditional contracts of sale, or leases with option to purchase covering railroad equipment or rolling stock, must be in writing, and in order that same shall be valid as against any subsequent judgment creditor, or bona fide purchaser for value and without notice, the contract must be acknowledged (does not say by whom) and be recorded in the county clerk's office of the county wherein the vendee or lessee has its principal place of business at the time such contract is executed. Each locomotive, engine or car so sold or leased, shall have the name of the vendor or lessor plainly marked on each side thereof, followed by the word "owner" or "lessor" as the case may be.

Upon payment in full a declaration in writing to that effect shall be made by the vendor or his assignee, which declaration may be made on the margin of the record, attested by the county clerk, or it may be by a separate instrument, acknowledged and recorded.

Fees for recording ten cents per folio (100 words), five cents for indexing each name.

Fees for noting discharge on margin of the record, twenty-five cents. Lord's Oregon Laws, §§ 3109, 6970-71, 7405.

PENNSYLVANIA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are regulated by statute law where the property involved is attached or to be attached to real property or chattels real. They are also valid as between the parties thereto on any sort of personal property. (See General Remarks). (See Conditional Sale Law.) General Assembly 1915, Act No. 386. Purdon's Dig. Vol. 6 (Sup.) Pages 7485-87. McCullough v. Porter, 4 W. & S. 177; Stimpson Computing Scale Co. v. Schetrompf & Sons, 13 Pa. Sup. Ct. 377; Rose v. Story, 1 Pa. 190; Crist v. Kleber, 79 Pa. 290; Thompson v. Paret & Co., 94 Pa. 275; Dando v. Foulds, 105 Pa. 74; Peek et al v. Heim et al, 127 Pa. 500, 17 Atl. 984; Burson v. Fire Association, 136 Pa. 267, 20 Atl. 401; Collins et al v. Houston, 138 Pa. 481, 21 Atl. 234; Brown Bros. & Co. v. Billington, 163 Pa. 76, 29 Atl. 904; Post Printing & Pub. Co. v. Insurance Co. of N. Am., 189 Pa. 300, 42 Atl. 192; Duplex Printing Press v. Clipper Pub. Co., 213 Pa. 207, 62 Atl. 841; In re: Hartdagan, 189 Fed. 546; Gen. Electric Co. v. Richardson et al, 233 Fed. 84.

How Executed.

The contract should be in writing and as those agreements which cover property attached or to be attached to real estate, or chattels real; need to be signed by all parties thereto, it is advisable to have all contracts so executed.

Acknowledgment of Proof.

There is no requirement that any contract, either conditional sale or lease with option to purchase, shall be signed by a subscribing witness, or be acknowledged or proven.

Recording or Filing.

Where the contract does not cover property attached or to be attached to real estate or chattels real, then whether the instrument be a conditional sale agreement or lease with option to purchase no recording or filing is required, and even if perfected in this manner no additional protection will be afforded. In those instances where such attachment is involved the contract should be recorded. It seems evident that an unrecorded lease with option to purchase under such circumstances is no longer available where the rights of third parties are involved. (See Conditional Sale Law).

Recording Fee.

The fees of a prothonotary are not uniform for every county in the state, but are fixed by law according to the population of the county in which he acts. As a general rule it may be said that a minimum fee of $1.25 is charged and this may be increased if the contract is a long one. Purdon's Dig. Vol. V. (Sup.) Pages 6144-6156.

Re-Recording or Renewal.

There is no provision for re-recording or renewal and the contract is valid for the term of six years.

Discharge.

The contract when recorded must be discharged upon demand after payment. (See Conditional Sale Law).

Criminal Liability of Vendee.

There is no provision of law making it a crime to sell or dispose of property held under conditional sale contract, but where the agreement is a lease with option to purchase, and the bailee shall fraudulently take or convert the property to his

own use, or to the use of any other person except the owner thereof, such acts shall constitute larceny and be punishable upon conviction as a felony by a fine not exceeding $500.00 or imprisonment not exceeding three years. Pepper & Lewis Dig. Vol. I, Page 1239, §§ 360-361. Purdon's Dig. 13 Ed. Vol. I, Pages 970-71, 973, §§ 304, 310. Kraus v. Commonwealth, 93 Pa. 418; Commonwealth v. Wilson, 62 Pa. Sup. Ct. 618.

Loss, Who Must Bear.

Where property is held under conditional contract of sale, lease, or bailment, and is injured or destroyed before payment in full the vendor, lessor or bailor must bear the loss. This liability could undoubtedly be transferred to the vendee, lessee, or bailee, by a proper provision in the contract. Reitz's Appeal, 64 Pa. 162; Burson v. Fire Association, 136 Pa. 267.

Fixtures.

Where property covered by a conditional sale contract or lease with option to purchase is attached to real estate or chattels real, the instrument must be recorded or same will be void as to third parties. What degree of fastening to, or incorporation upon or into, the real property or chattels real shall constitute a legal attachment under this statute has not been determined, and the law as it stands is very uncertain. It would scarcely seem that the slightest fastening would suffice to make it necessary that a contract should be recorded; yet the object of this law is evidently to destroy secret liens, and the only safe and sure method is to record when there can be no questions raised. (See Conditional Sale Law).

Landlord's Lien.

The general rule is that all personal property found on the premises of a landlord may be distrained for rent, whether belonging to the tenant or to a third person. The exceptions are,

where the property has become a fixture on the real estate, where it was placed there to be wrought, worked up or managed in the way of tenant's trade or employment, and where the chattel is actually in some person's hands. Also certain statutory exemptions (See Exemptions). Property delivered under conditional sale contract not recorded would not be protected, neither would the lease or bailment with option to purchase be of any value as against a distress for rent. It is believed, however, that where chattels delivered under conditional sale contract are attached to real estate, and such contract is recorded before such attachment, then the landlord's lien would be subsequent. Such a lien may always be waived by an instrument in writing founded upon a valuable consideration to the landlord. Pepper & Lewis Dig. Vol. 1, Pages 2635-2646. Purdon's Dig. Vol. 2, Pages 2174-2186. Purdon's Dig. Vol. 6, (Sup.) Page 6512. Kessler v. McConachy, 1 Rawle 435; Price v. McCallister, 3 Grant 248; Beltzhoover v. Waltman, 1 W. & S. 416; Harris & Shaw, 17 Pa. Sup. Ct. 1; Karns v. McKinney, 74 Pa. 387; Whiting v. Lake, 91 Pa. 349; Myers v. Esery et al, 134 Pa. 177, 19 Atl. 488; Rohrer v. Cunningham, 138 Pa. 162, 20 Atl. 872; American Pig Iron etc. Co. v. Iron & Coal Co., 205 Pa. 403, 54 Atl. 1047; Liquid Carbonic Co. v. Truby, 40 Pa. Sup. Ct. 634.

EXEMPTIONS.

Hereafter all pianos, melodeons, organs, leased or hired by any person or persons residing in this commonwealth shall be exempt from levy and sale on execution or distress for rent due by such person or persons so leasing or hiring any such piano or pianos, melodeon or melodeons, or organ or organs in addition to any articles or money now exempt by law.

Provided: That the owner or owners of any such piano, melodeon or organ or his or their agent or the person or persons so leasing or hiring the same shall give notice to the landlord or his agent that the instrument is leased or hired. Act of May 13, 1876, P. L. 171.

An act to exempt sewing machines and typewriting machines, leased or hired, from levy or sale on execution or distress for rent.

Section 1. Be it enacted, etc.—"That hereafter all sewing machines and typewriting machines, leased or hired by any person or persons residing in this commonwealth, shall be exempt from levy and sale on execution or distress for rent due by such person or persons so leasing or hiring any such sewing machine or sewing machines, typewriting machine or typewriting machines, in addition to any articles or money exempt by law.

"Provided, that the owner or owners of such sewing machine or sewing machines, typewriting machine or typewriting machines, or his or their agents or the person or persons so leasing or hiring the same, shall give notice to the landlord or his agent that the instrument is leased or hired."

Act of June 25th, 1895, P. L. 282.

An act to exempt electric motors, electric fans or dynamos, leased or hired from levy or sale on execution or distress for rent.

Section 1. Be it enacted: "That hereafter all electric motors, electric fans or dynamos leased or hired by any person or persons residing in this commonwealth shall be exempt from levy and sale on execution or distress for rent due by such person or persons so leasing or hiring any such electric motors, electric fans or dynamos, in addition to any article or money now exempt by law,

"Provided, that the owner or owners of such electric motors, electric fans or dynamos or his or their agent or the person or persons leasing or hiring the same shall give notice to the landlord or his agent, within ten days after such instrument or apparatus is placed upon the demised premises, that the instrument or apparatus is leased or hired." Act of May 3rd, 1909, P. L. 407.

An act exempting soda water apparatus and appurtenances thereto, leased, hired or conditionally sold from levy and sale on execution or distress for rent.

Section I. Be it enacted: "That hereafter all soda water apparatus and appurtenances thereto, leased or hired by any person or persons residing within this commonwealth, or conditionally sold to any such person or persons under a contract of sale reserving title in the vendor until paid for, shall be exempt from levy and sale on execution or distress for rent so long as the title thereto remains in the owner, lessor or conditional vendor.

"Provided: That either the name and address of owner, lessor or conditional vendor of such soda water apparatus be marked on or be attached to said soda water apparatus, on a conspicuous part thereof; or that before levy or distress the owner, lessor or conditional vendor of such soda water apparatus and appurtenances or his or their agent or person or persons so leasing, hiring or purchasing the same, shall have given notice to the landlord or his agent that the same are leased, hired or sold under reservation of title."

Section II. "All acts or parts of acts inconsistent herewith be and the same are hereby repealed." Act of May 3rd, 1909, P. L. 423.

Notes.

The giving of notes following a conditional sale contract, or a lease with option to purchase, is permitted and does not supersede the original contract. Levan v. Wilten, 135 Pa. 61, 19 Atl. 945; Kelly Springfield Road Roller Co. v. Spyker, 215 Pa. 332, 64 Atl. 546; Lippincott v. Scott, 198 Pa. 283, 47 Atl. 1115; Kelly Springfield Road Roller Co. v. Schlimme, 220 Pa. 413, 69 Atl. 867; Link Machinery Co. v. Continental Tr. Co., 227 Pa. 37, 75 Atl. 985; Lippincott & Co. v. Holden, 11 Pa. Sup Ct. 15; Walton v. Tepel, 210 Fed. 161.

Election of Remedies.

Where action is brought against the vendee or lessee and a money judgment obtained for the purchase price or the rent, vendor or lessor is deemed to have waived his rights under the contract and cannot afterward replevin the property. As well where the property is taken upon default, no recovery can thereafter be had for the money owing. Jacob v. Groff, 19 Pa. Sup. Ct. 144; Ketcham v. Davis, 31 Pa. Sup. Ct. 583; Rowe v. Sharpe, 51 Pa. 26; Ferguson v. Rafferty, 128 Pa. 337, 18 Atl. 484; Campbell etc. Co. v. Hickok, 140 Pa. 290, 21 Atl. 362; Scott v. Hough, 151 Pa. 630, 35 Atl. 123; Ferguson v. Lauterstein, 160 Pa. 427, 28 Atl. 852; Seanor & One, v. McLaughlin, 165 Pa. 150, 30 Atl. 717; Durr v. Replogle, 167 Pa. 347, 31 Atl. 645; In re: Norton, 181 Fed. 901; Arctic Ice Machine Co. v. Armstrong etc., 192 Fed. 114.

Repossession and Refund.

Where property held under conditional sale contract or lease with option to purchase, is repossessed upon default the vendor or lessor is liable to repay vendee or lessee the full amount received under the contract, less a reasonable rental for the use of said property while in vendee's or lessee's possession, and less an amount equal to any depreciation in value of said property by damage or injury over and above ordinary wear and tear, which it may have sustained while in vendee's or lessee's possession. This liability might be avoided by a properly worded clause in the contract permitting vendor or lessor to retain as rent all money received. North & Co. v. Williams, 120 Pa. 109, 13 Atl. 723; Simon v. Edmundson & One, 10 Pa. Co. Ct. 315; Hineman v. Mathews, 138 Pa. 204, 20 Atl. 843.

Railroad Equipment.

Whenever any railroad equipment and rolling stock shall hereafter be sold, leased or loaned, on the condition that the title to the same, notwithstanding the possession and use of

the same by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract, as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder, shall have been fully complied with, such contract shall be invalid as to any subsequent judgment creditor, or any subsequent purchaser for a valuable consideration without notice, unless:

I. The same shall be evidenced by writing duly acknowledged before some person authorized by law to take acknowledgments of deeds.

II. Such writing shall be recorded in the same book as mortgages are recorded, in the office of the recorder of deeds of the county in which is located the principal office or place of business of such vendee, lessee or bailee, within the state.

III. Each locomotive or car so sold, leased or loaned, shall have the name of the vendor, lessor or bailor, or the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word, "owner," "lessor," "bailor," or "assignee," as the case may be. Purdon's Digest, Vol. IV, p. 3917.

General Remarks.

A contract in the form of a chattel mortgage is not available to retain a lien in the mortgagee upon personal property, even though acknowledged and recorded, except for railroad equipment and certain articles connected with the coal and iron industry (Pepper & Lewis' Digest, Vol. I, pp. 1605-14, §§ 160-184; Vol. II, p. 3964, § 149). In those instances where the personal property becomes attached to real estate or chattels real, a conditional sale contract or a lease with option to purchase must be recorded in order to protect the original owner as against the rights of third parties. Where such personal property shall not become attached to real estate or chattels real, then a lease or bailment with option to purchase is the

proper method for retaining security upon personal property which is not to be paid for at the time of delivery.

The questions arising where attempts have been made to retain a lien or title in the vendor until the purchase price is paid have been extensively litigated in this state and the decisions are somewhat confused as to the distinction between contracts held to be conditional sales and those held to be bailments or leases.

The agreements passed upon in the following cases have been held to be bailments and valid as against third parties in favor of the bailor or lessor. Myers v. Harvey, 2 P. & W. 478; Clark v. Jack, 7 Watts. 375; Lehigh Co. v. Field, 8 W. & S. 232; Wieder v. Roschman, 13 Pa. Co. Ct. 94; Jones v. Wands, et al, 1 Pa. Sup. Ct. 269; Lippincott & Co. v. Holden, 11 Pa. Sup. Ct. 15; Stimpson Computing Scale Co. v. Schetrompf & Son, 13 Pa. Sup. Ct. 377; Painter v. Snyder, 22 Pa. Sup. Ct. 603; Ketcham v. Davis, 31 Pa. Sup. Ct. 583; Miller v. Douglas, 32 Pa. Sup. Ct. 158; Nat'l Cash Register Co. v. Shurber, 41 Pa. Sup. Ct. 187; King v. Humphreys, 10 Pa. 217; Chamberlin v. Smith, 44 Pa. 431; Rowe v. Sharpe, 51 Pa. 26; Henry & Co. v. Patterson, 57 Pa. 346; Becker v. Smith, 59 Pa. 469; Enlow v. Klein, 79 Pa. 488; Dando v. Foulds, 105 Pa. 74; Wheeler & Wilson Mfg. Co. v. Heil et al, 115 Pa. 487, 8 Atl. 616; Wertz et al v. Collender Co., 6 Pa. Cases 361, 9 Atl. 331; Ditman v. Cottrell & Sons, 125 Pa. 606, 17 Atl. 504; Goss Printing Press Co. v. Jordan, 171 Pa. 474, 32 Atl. 1031; Lippincott v. Scott, 198 Pa. 283, 47 Atl. 1115; Stiles v. Seaton, 200 Pa. 114, 49 Atl. 774; American Car & Fdry Co. v. R. R. Co., 218 Pa. 519, 67 Atl. 838; Link Mach'y Co. v. Continental Tr. Co., 227 Pa. 37, 75 Atl. 985; In re: Angeny, 151 Fed. 959; Walton v. Tepel, 210 Fed. 161.

The agreements passed upon in the following cases have been held to be conditional contracts of sale and not valid as to third parties: Martin v. Mathiot, 14 S. & R. 214; Jenkins v. Eichelberger, 4 Watts. 121; Henrice Laundry Machy. Co. v. Fromuth, 22 Pa. Co. Ct. 49; Ladley v. U. S. Express Co., 3 Pa.

Sup. Ct. 149; Harper v. Hogue, 10 Pa. Sup. Ct. 624; Prichett v. Cook, 62 Pa. 193; Haak v. Linderman & One, 64 Pa. 499; Stadtfeld v. Huntsman & Co., 92 Pa. 53; Brunswick & Balke Co. v. Hoover et al, 95 Pa. 508; Forrest v. Nelson Bros. & Co., 108 Pa. 481; Wire Book Mach. Co. v. Crowell, 4 Pa. Cases 499, 8 Atl. 22; Dearborn v. Raysor, 132 Pa. 231, 20 Atl. 690; Summerson v. Hicks et al, 134 Pa. 566, 19 Atl. 808; Farquhar v. McAlevy, 142 Pa. 233, 21 Atl. 811; Stoddart v. Price, 143 Pa. 537, 22 Atl. 811; Ott v. Sweatman, 166 Pa. 217, 31 Atl. 102; Morgan-Gardner Electric Co. v. Brown, 193 Pa. 351, 44 Atl. 459; Duplex Printing Press Co. v. Clipper Pub. Co., 213 Pa. 207, 62 Atl. 841; Kelly Road Roller Co. v. Spyker, 215 Pa. 332, 64 Atl. 546; In re: Tice, 139 Fed. 52; In re: Morris, 156 Fed. 597; In re: Rinker, 174 Fed. 490, modified but not on this point, 182 Fed. 603; In re: G. & K. Trunk Co., 176 Fed. 1007; In re: Franklin Lbr. Co., 187 Fed. 281; In re: Gehris-Herbine Co., 188 Fed. 502; Miller Pasteurizing Machine Co. v. Conway, 214 Fed. 485.

It is definitely settled, however, that while an owner may lease personal property by a contract in writing, he cannot provide specifically that the title shall remain in him until certain stated amounts of money are paid, and this is not necessary as he is in fact the owner.

In such a lease there must be a provision that the property in question is to be returned to the lessor when the term of the lease is ended. The contract may, however, provide that if the rent as specified is paid, the lessee may thereupon elect to become the owner of the leased property.

The distinction then between contracts held to be conditional sales and not available against bona fide purchasers and other third parties, and contracts held to be bailments or leases and absolute protection against all third parties except landlords, may be briefly stated as follows:

If the contract provide that title to the property is retained in the vendor until certain payments are made, and that a bill

of sale for same will be executed to the vendee after such certain payments are received, and where there is no specified term of leasing and no agreement for return of the property, the contract is a conditional sale which in this state means it is an absolute sale as to all third parties, unless recorded as herein provided.

If, on the other hand, the instrument provides for a definite term of leasing, with certain rent to be paid, and for return of the property at the end of such term, it is a lease or bailment, even though it provide that upon receipt of the full rent for the term as specified, the lessee or vendee may elect to become, and shall thereupon become the owner of the leased property without further payment. There can, however, be no express provision for retention of title by the vendor or lessor, and no express provision for the giving of a bill of sale as the decisions hold that such agreements are entirely inconsistent with a lease. In many of the earlier decisions it was held that the lessee after payment in full of the rent as specified, might elect to purchase the property by paying a further consideration, however small. In the most recent cases before the highest court of the state, it has been decided that such payment of a further consideration is not essential and that the election alone is sufficient.

Such a lease should be signed by all parties thereto but no acknowledgment or proof is required, and where the property is not attached or to be attached to real estate or chattels real it does not need to be either filed or recorded to hold title as against all third parties except a landlord's lien for rent.

Where there is a question as to which class a contract belongs and a levy under execution, attachment or otherwise is made on the property involved, the vendor upon learning the facts should immediately telegraph the officer in charge to the effect that the property in question is leased to the lessee or vendee and that same should not be sold. This information should be confirmed by registered letter to the officer, and an attorney immediately secured to attend the advertised sale and

give notice to all parties of the bailor's or vendor's claim of title. The officer so notified will very seldom if ever dispose of the property, except subject to the vendor's or bailor's title, and any person buying at such a sale after the notice given is held in most cases to be not a bona fide purchaser for value, but only as taking the property subject to the vendor's or bailor's right.

In case of bankruptcy on the part of the vendee when the contract is in fact one of conditional sale, the status of the vendor varies with the conditions. If the vendee is declared a bankrupt or forced to make an assignment under state law and a trustee is appointed by the court, there is no remedy for the vendor and he must accept his dividends, if any there be, as an unsecured creditor. If, however, the assignment is under the state law and is voluntary the trustee gets no better title than the assignor had and where the purchaser at such trustee's sale has had notice of the vendor's title before the sale, he takes the property subject to the lien.

In any case where the contract is in fact a conditional sale, and has not been recorded as herein provided, the general rule applies that a sale without notice to an innocent purchaser for value is valid. If the vendee has sold or given a lien upon the property to an innocent third party for value, or if under levy by execution or attachment or otherwise, the property has been sold by the officer before notice to such officer and to the purchaser as heretofore indicated, the buyer gets good title and the vendor loses his lien or interest.

The importance of having a proper contract for use in the state of Pennsylvania cannot be too strongly stated. The conditional sale contract is enforceable between the parties thereto, and where the property covered is attached to real estate and the contract has been recorded same may be enforced as against third parties. In those instances where the personal property is not attached to a building and the rights of third parties intervene, the lease or bailment form of contract properly drawn with an option to purchase is the only safe method to pursue.

CONDITIONAL SALE LAW.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same, That the terms "conditional sale" when used in this act means any contract whereby goods or chattels attached or to be attached to real property or chattels real are sold or delivered upon condition that the said goods or chattels shall belong to the person to whom they are sold or delivered when the amount paid is a certain sum or the value of the property or any part thereof or on the occurrence of a future event or contingency. The term "conditional vendor," when so used, means the person who so sells or delivers such goods or chattels to another. The term "conditional vendee," when so used, means the person to whom such goods or chattels are so sold or delivered.

Contract for Conditional Sale.

Sec. 2. When personal property attached or to be attached to real property or chattels real is sold or delivered to any person on condition that it shall belong to the person purchasing or receiving it when the amount paid is a certain sum or the value of the property, or any part thereof, or upon the occurrence of a future event or contingency, the title to it to remain in the conditional vendor until such sum or value has been paid or until the occurrence of such future event or contingency, such condition in regard to the title so remaining until payment or until the occurrence of such future event or contingency shall be void as to all subsequent purchasers of such real property or chattels real for a valuable consideration, mortgagees and judgment creditors, without notice, unless the contract with its conditions is evidenced by writing, signed by the parties thereto, or their respective agents, and recorded as hereinafter provided.

This act is not to apply to any contract concerning railroad equipment and rolling stock or to any persons, firms or corporations engaged in the business of selling house furnishings.

Not To Become Fixtures.

Sec. 3. Every such contract for the conditional sale of any goods or chattels attached, or to be attached, to any real property or chattels real shall be void as against subsequent bona fide purchasers or encumbrancers of such real property or chattels real without notice and as to them the sale shall be deemed absolute unless such contract shall have been recorded and indexed as herein provided before such goods or chattels are so attached or before the date of such purchase or encumbrance of such real estate or chattel real.

Except as above provided, said goods or chattels shall not by reason of their being attached to any real property or chattels real become an accession thereto, but shall be treated as severable and subject to removal as against the conditional vendee, his heirs, executors, administrators, successors and assigns, and also as against all other persons having any interest in or liens against such real property or chattels real upon the tender of a sufficient bond to all such persons holding prior interests in or liens against the same conditioned for repairing all damage caused by such severance and removal.

Contents of Contract.

Sec. 4. Every such contract shall set forth clearly:

A. The date of the contract.

B. The names of the conditional vendor and the conditional vendee.

C. A description of the chattels by name or otherwise sufficient to identify them.

D. A statement of the conditions upon which the conditional sale is based.

E. The amount of the purchase price—that is, the certain sum or value to be paid before title is to pass—and when payable or due.

F. A description sufficient for identification and location of such real property or chattels real.

The contract shall be signed by the conditional vendor and conditional vendee, or their respective agents, and shall be verified by the oath or affirmation of the conditional vendor, his agent or attorney, to the effect that it is an existing bona fide contract, and showing the amount of the purchase price remaining unpaid, and when payable or due, as well as all other of the said conditions which remain unperformed.

Recording—Place—Time.

Sec. 5. Such contracts, or all of the terms required by Section Four hereof, shall be recorded and shall be notice from the date of such recording in the miscellaneous docket and indexed in the judgment index, the name of the conditional vendee in the column of defendants, and the name of the conditional vendor in the column of plaintiffs, in the prothonotary's office of the county wherein such real property or chattels real is situate.

Effect of Recording.

Sec. 6. Every such contract hereafter recorded, pursuant to the provisions of this act, shall be valid against the creditors of the conditional vendee, and against his subsequent purchasers, mortgagees, or judgment creditors, from the time of the recording thereof until the same be cancelled of record in the manner now provided by law for cancelling judgments.

Penalty for not Discharging.

Sec. 7. If a conditional vendor, assignee or the executor or administrator of either, after the title to such goods or chat-

tels shall have passed to the conditional vendee, either before or after breach of the conditions, does not, within ten days after being thereto requested, and after tender of reasonable charges, discharge such lien as provided herein, he shall forfeit to the person entitled to redeem, the sum of ten dollars and damages occasioned thereby, to be recovered as debts of like amount are by law recoverable.

Vendor's Rights.

Sec. 8. Upon the breach of the said conditions, or any of them, by the conditional vendee, the conditional vendor may, after five days' written notice to the conditional vendee, his agent or attorney, of his intention so to do (unless the provisions of said contract are before complied with) repossess himself of the property so conditionally sold or delivered, but the same is not to be taken out of the county in which it then is within fifty days after such taking.

Said notice shall name the amount due and owing on said contract and shall be served personally upon the conditional vendee, or his successor in interest, if he is within the county where the sale is to be held; and, if not within such county or he cannot be found therein, such notice must be mailed to him at his last known place of residence.

Should the conditional vendee demand it by written notice properly served on the conditional vendor, his agent or attorney within ten days after such taking, it shall be the duty of the conditional vendor, his agent or attorney, after thirty days and not more than forty days after such taking, to cause such property to be exposed at public sale at a convenient place in the county where located, after giving notice by publication once a week for three successive weeks in one newspaper published in the county and by at least ten printed or written hand bills posted in public and conspicuous places in the vicinity where the sale is to take place.

At such sale the conditional vendor may become the purchaser if he is the highest and best bidder.

The proceeds of the sale shall be distributed, first, to the costs and expenses incident to the sale; secondly, to the debt secured, and lastly, the surplus, if any, shall be paid over to the conditional vendee, his executors, administrators or assigns. Any time before sale had, the conditional vendee or his successors in interest shall have the right to redeem said property by complying with the terms of such contract and paying the legal costs then accrued, as herein provided. Gen. Assembly 1915, Act No. 386.

AFFIDAVIT FOR RECORD.

STATE OF PENNSYLVANIA, } *ss.*:
COUNTY OF YORK. }

Charles N. Allen being duly sworn says he is president of Read Machinery Company, Inc., the vendor named in the attached contract; that same is a bona fide existing contract between the parties thereto, and the balance unpaid of the purchase price is $180.00 payable as follows:

(State terms of payment).

CHARLES N. ALLEN,

Subscribed and sworn to before me
this 12th day of July, 1917.

HIRAM L. SUMMERS.
Notary Public in and for ————.

{ NOTARIAL SEAL. }

RHODE ISLAND.

Legal Status of Conditional Sale Contracts.

There is no express provision in the laws of this state for conditional contracts of sale, on ordinary personal property, but they are held valid by court decisions. Goodell v. Fairbrother, 12 R. I. 233; Carpenter v. Scott, 13 R. I. 477; Mosby v. Goff, 21 R. I. 494, 44 Atl. 930; Stearns v. Drake, 24 R. I. 272, 52 Atl. 1082.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as against all persons without acknowledgment by the vendee or vendor, or signing or proof by a subscribing witness. The only possible exception is where the property has become a fixture upon real estate.

Recording or Filing.

There is no provision of law requiring that contracts of conditional sale shall be either filed or recorded.

Recording Fee.

No provision.

Re-Recording or Renewal.

There is no provision for re-recording or renewal and such contracts are valid for the term of six years.

Discharge.

No provision.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where personal property delivered under conditional sale contract has been attached to real estate in a permanent manner, no removal can be had upon default and vendor's remedy would be an action in equity to charge the balance unpaid as a lien upon the building itself. McCrillis v. Cole, 25 R. I. 156, 55 Atl. 196; In re: Regealed Ice Co., 191 Fed. 931.

Landlord's Lien.

A landlord has no lien for rent against property located on his premises.

Notes.

No cases found.

Election of Remedies.

No cases found.

Repossession and Refund.

There seems to be no requirement in this state for refund upon repossession. A proper demand for the property must, however, be made. Putnam's Sons v. McLeod, 23 R. I. 373, 50 Atl. 646.

Railroad Equipment.

With reference to railroad or street railway equipment or rolling stock, a contract of conditional sale, or contract of leasing with option to purchase after certain sums of money have been paid, shall not be valid as against subsequent judgment creditors or subsequent bona fide purchasers for value and without notice, unless the same shall be evidenced by a written instrument executed by the parties thereto and duly acknowledged by the vendee, or lessee, or bailee as the case may be, or duly proven in the same manner as a deed of real estate, and such instrument is then filed for record in the office of the secretary of state. Each locomotive, engine or car so sold, leased or hired or contracted for, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the name "owner" or "bailor" as the case may be.

When payment in full shall have been received the instrument may be discharged by a declaration in writing to that effect by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record duly attested, or it may be made by a separate instrument in writing acknowledged by the vendor, lessor or bailor, or his or its assignee and recorded as aforesaid.

For recording any such contract or the discharge thereof the fees shall be 15 cents per folio of 100 words. The fee for noting discharge upon the margin of the record shall be 50 cents. General Laws 1909, Title XXI, Chap. 215, Page 738, §§ 63-64.

SOUTH CAROLINA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Code of Laws, § 3740. Herring & Company v. Cannon, 21 S. C. 212; Ludden & Bates So. Music House v. Dusenbury, 27 S. C. 464, 4 S. E. 60; Perkins v. Bank, 43 S. C. 39, 20 S. E. 759; Ludden & Bates So. Music House v. Hornsby, 45 S. C. 111, 22 S. E. 781; Wardlaw v. Troy Oil Mill, 74 S. C. 368, 54 S. E. 568; Armour & Co. v. Ross, 78 S. C. 294, 58 S. E. 941; Townsend v. Ashepoo Fertilizer Co., 212 Fed. 97; Augusta Gro. Co. v. Southern Moline Plow Co., 213 Fed. 786; In re: Sturckey Co., 224 Fed. 251.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

It is provided that no mortgage, except a mortgage or trust deed covering real or personal property of a railroad or manufacturing company, shall be valid, unless the property is described in writing or typewriting and not printing, on the face of the mortgage. Also no prosecution will lie for selling such property unless the above requirements appear. There are no express provisions along these lines as applied to conditional sale contracts, but chattel mortgages and such contracts are so

closely allied in this state, that as a measure of precaution it is advised the property be described in writing or typewriting and not in printing. Code of Laws, § 4103. Straub v. Screven, 19 S. C. 445; Talbott & Sons v. Sandifer, 27 S. C. 624, 4 S. E. 152.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without witnessing, or acknowledgment, or filing, or recording; but in order to make it valid, and to hold title as against subsequent creditors, (whether lien creditors or simple contract creditors), or purchasers for valuable consideration without notice, it is necessary that it be either filed or recorded as hereinafter set forth. To entitle such a contract to be filed it seems essential that it should be signed by two subscribing witnesses to the vendee's signature, and before it may be recorded, it must be signed by two and be proven by one subscribing witness to such vendee's signature. There is no provision of law by which such a contract may be acknowledged in person by the vendor or vendee so that it may be either filed or recorded. Code of Laws, §§ 1352, 3453, 3740.

Recording or Filing.

In order to hold title as against subsequent creditors (whether lien creditors or simple contract creditors), or purchasers without notice and for valuable consideration, the original contract should be either recorded or filed within ten days after the time of its delivery or execution. Later filing or recording will be notice to like parties from the date of such filing or recording, but not as to prior ones. Where the amount of such contract is $100.00 or less, the original may be filed if signed by the vendee and two subscribing witnesses, and it is not necessary that either of such witnesses prove the same by his oath.

Where the amount of such contract is over $100.00 the original must be recorded; and in order that same may be recorded

it is necessary that one of the subscribing witnesses make oath that he saw the contract duly executed by vendee, and that such signature was witnessed by himself and by the other subscribing witness. One of the witnesses may be the salesman for the vendor provided he does not also execute the contract for and on behalf of the vendor.

The filing or recording shall be made with the clerk of court, or in the counties of Charleston, Greenville or Spartanburg, with the register of mesne conveyances, of the county where the vendor, or owner resides if within the state, and if not such resident, then with the like officer of the county where the property in question is located. (It is possible that one subscribing witness may be all that is necessary upon a conditional sale contract, especially where same is to be filed, but in order to avoid all question, two should be secured). Code of Laws, §§ 1349, 1352, 1355, 3453, 3542, 3740. Milford v. Aiken, 61 S. C. 110, 39 S. E. 233.

Recording Fee.

The fee for filing such a contract is fifteen cents. The fee for recording is not uniform throughout the state varying according to the county, but in general should be fifty cents for recording a contract not exceeding 1,000 words and ten cents for each additional 100 words. In Orangeburg county the charge is six cents for each 90 words. Certain recording officers seek to charge a fixed fee of $1.00 for a contract of ordinary length, but there seems to be no provision of law justifying such act. Code of Laws, §§ 4211-4216.

Re-Recording or Renewal.

Such a contract is valid for the term of six years. There seems to be no provision for re-recording or renewal.

Discharge.

No provision.

Criminal Liability of Vendee.

It is a crime to sell or otherwise dispose of property covered by a conditional contract of sale. Where the value of such property exceeds $20.00, punishment for such unlawful disposal is a fine of not more than $500.00 or imprisonment for not more than two years, or both. Where the value of the property is $20.00 or less, the punishment is a fine of not more than $100.00 or imprisonment for not more than thirty days. Code of Laws, Criminal Code, § 447. State v. Haynes, 74 S. C. 450, 55 S. E. 118.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where property delivered under conditional contract of sale has been fastened to a building in such manner that same may be removed without material injury to the building or to itself, the courts have held that on failure of the contract payments the vendor is entitled to possession. Where the property has been so attached to a building as to become a material part thereof, and incapable of being removed without great injury to the building or to itself, it cannot be taken possession of and the vendor's remedy is by an action in equity to charge the amount unpaid as a lien upon the building. Padgett v. Cleveland, 33 S. C. 339, 11 S. E. 1069.

Landlord's Lien.

The statute law seems to be explicit upon the point that a landlord shall only have a lien by distress for rent, covering property actually owned by the tenant, and that upon property held by such tenant under conditional sale contract he can only subject same to his lien by paying the balance on the contract. This too, whether such contract be filed or recorded or

otherwise. There has been a decision however that an unfiled or unrecorded contract is no protection to the vendor, and another that it is valid. It is always advisable to file or record before the property involved is delivered to vendee when no question can arise. Code of Laws, §§ 3515, 3516. Ex parte Knobeloch, 26 S. C. 331, 2 S. E. 612; Simpson v. McDonald, 79 S. C. 277, 60 S. E. 674.

Notes.

The giving of notes under conditional sale agreement does not ordinarily operate to supersede such contract. Care should be taken, however, that not too great a portion of the contract shall be included in the notes, or that additional clauses be inserted, for under such circumstances it might be necessary to file or record same, and the notes would be made non-negotiable. Straub v. Screven, 19 S. C. 445; Herring & Co. v. Cannon, 21 S. C. 212.

Election of Remedies.

The law is definitely settled in this state, that where the vendor under conditional contract of sale sues and secures a money judgment, he cannot thereafter replevin the property, except in case of fraud, even though such judgment be not paid. Standard etc. v. Alexander, 68 S. C. 506, 47 S. E. 711; Rice v. Hampton, 91 S. E. 5.

Repossession and Refund.

There seems to be no requirement in this state for refunding any portion of the purchase price when the property is taken back upon default. Talbott etc. v. Padgett, 30 S. C. 167, 8 S. E. 845; Singer Mfg. Co. v. Smith, 40 S. C. 529, 19 S. E. 132.

Railroad Equipment.

Conditional sale contracts, or leases, or mortgages covering locomotive engines, rolling stock or other railway equipment must be in writing signed by vendee or lessee or bailee or mortgagor, and in order to be valid as against subsequent creditors or purchasers for value and without notice must be recorded, within 40 days after the execution and delivery of such contract, with the secretary of state. A later record will be valid as to the same parties whose claims arise after such recording. Each engine, car and other railway equipment shall have the name of the vendor or lessor or bailor or mortgagor plainly marked on each side thereof followed by the word "owner," "lessor," "bailor" or "mortgagor," as the case may be.

The property must be so described in the instrument as to correspond with the name so marked thereon. Before such instrument can be recorded it must be proven by one of two subscribing witnesses.

Upon payment in full same shall be discharged by a declaration on the margin of the record, or a satisfaction in writing duly proven by a subscribing witness shall be recorded. Failure to so satisfy subjects the vendor, lessor, bailor, mortgagee or his or its assigns to a penalty of $500.

Fees for recording are the same amounts payable to a register of mesne conveyances for like services. Code of Laws, Vol I, §§ 705-707.

Forms.

AFFIDAVIT OF SINGLE SUBSCRIBING WITNESS TO INDIVIDUAL SIGNATURE.

STATE OF SOUTH CAROLINA, }
COUNTY OF SPARTANBURG. } *ss.*:

Personally appeared before me Andrew J. Stone and made oath that he saw the within named James T. Reade sign, seal, and as his act and deed, deliver the attached written agreement, and that he witnessed the execution thereof, and subscribed his name as witness thereto.

ANDREW J. STONE.

Sworn to and subscribed before me this
12th day of July, 1917.

ROBERT G. WHEELER,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

AFFIDAVIT BY ONE OF TWO SUBSCRIBING WITNESSES TO INDIVIDUAL SIGNATURE.

STATE OF SOUTH CAROLINA, }
COUNTY OF SPARTANBURG. } *ss.*:

Personally appeared before me Andrew J. Stone and made oath that he saw the within named James T. Reade sign, seal and as his act and deed deliver the within written agreement for the uses and purposes therein mentioned and that he with Lewis A. Maynard witnessed the due execution thereof.

ANDREW J. STONE.

Sworn to and subscribed before me
this 12th day of July, 1917.

ROBERT G. WHEELER,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

AFFIDAVIT BY ONE OF TWO SUBSCRIBING WITNESSES TO CORPORATION SIGNATURE.

STATE OF SOUTH CAROLINA,
COUNTY OF SPARTANBURG. } *ss.*:

Personally appeared before me Andrew J. Stone and made oath that he saw George M. Fisher, as president, sign, affix the corporate seal of the within named Acme Pattern Company, and as the act and deed of said corporation deliver the within written agreement; and that he with Lewis A. Maynard witnessed the execution thereof.

ANDREW J. STONE.

Sworn to and subscribed before me
this 12th day of July, 1917.

ROBERT G. WHEELER,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

Officers Before Whom Affidavits May Be Made.

Within the State. A commissioner appointed by the court of common pleas, a notary public, a justice of the peace, or any other officer authorized to administer an oath.

Without the State but Within the United States. Any commissioner of deeds of the state of South Carolina, a clerk of any court of record, a notary public.

SOUTH DAKOTA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Compiled Laws, § 1315. Rosenbaum v. Foss, 4 S. D. 184, 156 N. W. 114; Webber v. Conklin, 20 S. D. 52, 104 N. W. 675; In re: Nelson, 191 Fed. 233.

How Executed.

Conditional contracts of sale must be in writing signed by the vendee, but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it, or shipping the goods, being sufficient to make a binding contract between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by vendor.

The law of chattel mortgages provides, that in such instrument above the signature of the mortgagor must appear a statement that a copy thereof has been delivered to him. If this be lacking the mortgage is void and it cannot be filed so as to protect the mortgagee. There has been no court decision upon this point, and it is the judgment of prominent local attorneys that these provisions, not being incorporated specifically into the statutes governing conditional sale contracts, do not apply thereto. (The Author concurs with this view). Compiled Laws, §§ 1315, 2085-86, 2090, 2092.

Acknowledgment of Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid as to third persons without notice the contract must be filed.

Recording or Filing.

In order to hold title as against third persons without notice, the original contract duly signed by vendee must be filed with the register of deeds in the county where the vendee resides.

The law provides that a chattel mortgage must be signed by two subscribing witnesses before it can be filed, but does not require that such witnesses prove the contract by their oaths. The law as to conditional sales simply states that such contracts must be in writing and be filed with the register of deeds in the county where the vendee resides, but makes no provision as to the manner in which they shall be acknowledged or proven. A court decision has been made that a conditional contract of sale is in effect a chattel mortgage. This has given rise to much confusion, as to whether or not it is necessary, that such a contract shall be signed by two subscribing witnesses before it can be filed. Many attorneys in this state declare that no subscribing witnesses are necessary, where the contract is purely and simply one of conditional sale, by which title only is retained in the vendor until full payment is made. On the other hand, so many contracts contain provisions which make them something more than a mere conditional contract of sale, that the only safe and sure rule to be followed in the execution of all such contracts is that they shall be signed by two subscribing witnesses. Then they are entitled to be filed and no question can be raised as to their legality. One of the subscribing witnesses may be the salesman for the vendor, provided he does not also execute the contract for and on behalf of the vendor. Compiled Laws, §§ 1315, 2085-86, 2090, 2092. Pringle v. Canfield, 19 S. D. 506, 104 N. W. 223.

Recording Fee.

The fee for filing a chattel mortgage is ten cents, but there is no express provision fixing the fee for filing a con-

ditional sale contract. Many officials insist upon receiving 25 cents. Compiled Laws, Political Code, Page 430, § 1827.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

There has been no determination in this state as to the rights of a conditional vendor where the property in question has been fastened to a building.

Landlord's Lien.

A landlord has no lien for rent against personal property placed in his building or upon his premises.

Notes.

No cases found.

Election of Remedies.

Where two or more remedies exist in favor of a vendor under conditional sale agreement and one of them is availed of, the others are deemed to be waived.

The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him is deemed to be:

1. If the property has been resold pursuant to Section 2151 the excess if any of the amount due from the buyer under the contract over the net proceeds of the resale; or

2. If the property has not been resold in the manner prescribed by Section 2151 the excess if any of the amount due from the buyer under the contract, over the value to the seller, together with the excess if any of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof if the buyer had accepted it. Compiled Laws, § 2303.

One who sells personal property has a special lien thereon, dependent on possession for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner, as if the property was pledged to him for the price. Compiled Laws, § 2151. Dowagiac Mfg. Co. v. White Rock Co., 18 S. D. 105, 99 N. W. 854; International Harvester Co. v. Pott et al, 32 S. D. 82, 142 N. W. 652; Sioux Falls Adj. Co. v. Aikens, 32 S. D. 154, 142 N. W. 651.

Repossession and Refund.

No cases found.

Railroad Equipment.

Railroad equipment and rolling stock may be delivered under conditional sale contract, or lease with option to purchase, but the term may not be longer than ten years, and in order that such instrument shall be valid as to subsequent purchasers in good faith and creditors, same must be in writing duly acknowledged, and the original thereof must be recorded with the secretary of state, and with the register of deeds, in the county where is located the principal place of business of such

vendee or lessee. (This necessitates duplicate originals). Each locomotive or car so sold or leased must have the name of the vendor, lessor or assignee of the vendor or lessor marked thereon followed by the word "owner," or "lessor" as the case may be.

Fees to secretary of state for recording 25 cents per folio.

Fees to register of deeds 50 cents for the first 400 words and 10 cents for each additional 100 words. Compiled Laws, Vol. II, §§ 490, 491. Compiled Laws, Vol. I, Political Code, Page 430, § 1827. Compiled Laws, Vol. I, Political Code, Page 24, § 1.

TENNESSEE.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. There are special rules for railroad equipment and fencing materials. (See Railroad Equipment). (See Fencing Materials). Shannon's Code, § 3666 as Amended by Public Laws 1911, Chap. 8, §§ 3667-70, Laws of 1899, Chap. 15. Houston v. Dyche, 1 Meigs 76; Gambling v. Read, 1 Meigs 281; Burson v. Dougherty, 11 Humphrey 50; Burke v. Harrison, 5 Sneed 237; Price v. Jones, 3 Head 84; McCombs v. Guild Church Co., 9 Lea. 81; Wilder & Co. v. Wilson & One, 16 Lea. 548; Holmark v. Molin, 5 Cald. 482; Mayer v. Catron, 48 S. W. 255 (no Tenn. Cit.); Light & Co. v. Insurance Co., 105 Tenn. 480, 58 S. W. 851; Owenby v. Swann, 59 S. W. 378, (no Tenn. Cit.); Blair v. Johnson & Sons, 111 Tenn. 111, 76 S. W. 912; Star Clothing Co. v. Nordemann et al, 118 Tenn. 384, 100 S. W. 93; Nance v. Houck Piano Co., 128 Tenn. 1, 155 S. W. 1172; Carolina etc. Ry. Co. v. Unaka Springs Lbr. Co., 130 Tenn. 354, 170 S. W. 591; Shaw v. Webb, 131 Tenn. 173, 174 S. W. 273; Blackwood etc. Co. v. Auto Storage Co., 133 Tenn. 515, 182 S. W. 576; Parker-Harris Co. v. Tate etc., 135 Tenn. 509, 188 S. W. 54; In re: Leech Woolen Mills, 129 Fed. 922; Reversed in 134 Fed. 221; Coweta Fertilizer Co. v. Brown, 163 Fed. 162; Mitchell Wagon Co. v. Poole et al, 235 Fed. 817.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping

the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Laws of 1899, Chap. 15. Singer Sewing Machine Co. v. Cole, 4 Lea. 439; Meagher v. Hollenberg, 9 Lea. 392.

Acknowledgment or Proof.

Such a contract needs no subscribing witness, nor acknowledgment or proof by any one.

Recording or Filing.

There is no provision for recording or filing such an instrument so as to make it notice, and no necessity exists for such action as the contract is valid with reference to all third persons, except where the property becomes a permanent fixture upon real estate.

Recording Fee.

No provision.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

It is a crime, punishable by imprisonment in the county jail for not more than six months or by a fine of not more than $50.00 or both, to sell, give away, or otherwise conceal or dispose of property held under conditional contract of sale, unless with the written consent of the vendor. If, however, in any

such case the full balance due on such property and costs be paid before the offender is arraigned for trial, no punishment shall be inflicted.

It shall be unlawful to remove from the state, conditionally sold property, before it is paid for, and without the written consent of vendor. A conviction for such an offense is punishable as a felony by imprisonment for not less than one year, or more than five years, and a fine of not less than $250.00 or more than $500.00. Laws of 1899, Chap. 12. Laws of 1909, Chap. 557. Pappas v. State, 135 Tenn. 499, 188 S. W. 52.

Loss, Who Must Bear.

Where property has been delivered under conditional sale contract and is injured or destroyed before payment in full, the loss falls upon vendee. Marion Mfg. Co. v. Buchanan, 118 Tenn. 238, 99 S. W. 984; Planters' Bank v. Van Dyck, 4 Heisk, 617.

Fixtures.

Where personal property delivered under conditional sale contract has been fastened to a building in such a manner that it may be removed without material damage to the building or to the property or to both; then same may be taken away upon default. On the contrary if such property becomes firmly attached to a building, and is in a legal sense an integral part thereof then no removal could be had; especially if the rights of third parties had intervened. The vendor might have under such circumstances an equitable right to enforce the balance unpaid as a lien against the building. Union Bank & Tr. Co. v. Wolf Co. et al, 114 Tenn. 255, 86 S. W. 310; Southern Ice & Coal Co. v. Alley, 127 Tenn. 173, 154 S. W. 536.

Landlord's Lien.

There is no provision of law giving landlords a lien for rent on personal property found on their premises.

Notes.

Notes may be given following a conditional sale contract and they may be transferred and extended without affecting the security. McDonald Auto Co. v. Bicknell, 129 Tenn. 493, 167 S. W. 108.

Election of Remedies.

A conditional sale vendor is not confined to the statutory remedy of taking possession upon default, advertising the property and selling same at public auction.

An action in equity may be brought and a foreclosure had. The effect of securing a money judgment, and thereafter attempting to regain the property has not been determined. Southern Ice & Coal Co. v. Alley, 127 Tenn. 173, 154 S. W. 536.

Repossession and Refund.

Where property held under conditional sale contract is taken possession of from vendee upon default, the vendor shall give written or printed notice of a public sale thereof, the date of such sale to be at least ten days after the giving of such notice. The notice in question shall be posted (or fastened up) in at least three public places within the county where the property is to be sold; one to be in the district where the property is to be sold, and one at the court house door in the county in which the property is to be sold, and the other at any public place in said county. The giving of such notice must begin within ten days after vendor secures possession. From the proceeds of such sale vendor may deduct his debt and the expenses of sale, the balance to be paid, over to vendee. In case the amount realized from such sale is not sufficient to pay the balance owing and such expenses, then vendor still has an ordinary debt for this amount. Upon failure of vendor to pay vendee any surplus as above provided same may be collected by action. The original vendor and vendee may at any time by agreement waive the sale in question. If no waiver is entered

into, and no sale as herein provided is had, the vendee may recover from vendor all the payments made under contract. Shannon's Code, § 3666, as Amended by Public Laws 1911, Chap. 8, §§ 3667-70. Cowan v. Singer Mfg. Co., 92 Tenn. 376, 21 S. W. 663; Liebermann v. Puckett, 94 Tenn. 273, 29 S. W. 6; Milburn Mfg. Co. v. Wayland, 43 S. W. 129, (no Tenn. Cit.); Tschopick v. Lippincott et al, 48 S. W. 128, (no Tenn. Cit.); Whitelaw Fur. Co. v. Boon, 102 Tenn. 719, 52 S. W. 155; Massillon etc. Engine Co. v. Wilkes, 82 S. W. 316, (no Tenn. Cit.).

Railroad Equipment.

Railroad equipment or rolling stock may be delivered under conditional sale contract or lease with option to purchase. Such contract shall be in writing signed by all parties thereto, and the term cannot exceed six years. In order that same shall be valid as against purchasers from, or creditors of vendee or lessee the original contract must be acknowledged by such vendee or lessee, as deeds of real estate are requited to be acknowledged; and same must be recorded with the secretary of state, and with the county register of the county where vendee or lessee has its principal place of business within the state. (This necessitates duplicate originals). Each locomotive engine or car so sold or leased shall have the name of the vendor or lessor plainly placed or marked on each side thereof, or be otherwise marked so as to indicate the ownership.

Fees to secretary of state ten cents per folio (100 words) for recording.

Fees to county register for the first 300 words or less 75 cents, for each additional 100 words, 10 cents. Shannon's Code, §§ 3587-89, 6369, 6427.

Fencing Material.

Section 1. That hereafter when any fencing wire, fencing posts, or other fencing material is sold upon condition that title

thereto is to remain in the seller until that part of the consideration remaining unpaid, is paid, the use thereafter of such fencing wire, fencing posts or other fencing materials in the erection or repairing of fences on real estate shall not, by such use, thereby become a fixture and shall continue its character as personal property until the unpaid consideration therefor is fully paid, or sale is made under this Act; but no such retention of title shall be legal or valid unless evidenced by note or other written contract or memorandum, executed at the time of the sale; Provided this act shall not apply to counties having a population of not more than 25,910 and not less than 25,907; also to counties having a population of not more than 22,669, and not less than 22,665 according to the Federal census of 1910, or any subsequent Federal census.

Section 2. That if default be made by the purchaser, in case of sale provided for in Section 1 of this Act, the seller, his agent or assignee may, at any time after such default, regain possession of the property sold by action of replevin before any court of competent jurisdiction, or any justice of the peace having jurisdiction of the amount, and shall within ten days after regaining possession, advertise the property for sale, for cash to the highest bidder, by written or printed notices posted in as many as three public places in the county where the property is to be sold, one of which places to be in the district in which the property is to be sold, one at the court house door in the county in which the property is to be sold, and the other at any public place in said county (said notices to contain a description of the property to be sold, and the time, terms, and place of sale) and unless the debt or claim of the seller, or his assignee, is satisfied before the day of sale, then it shall be the duty of the seller, his agent or assignee to (at the time and place as stated in the notices); offer for sale and sell said property, as above provided, and with the proceeds of sale satisfy the debt or claim arising from the conditional sale and the expense of advertisement and sale, and the remainder, if any, of the proceeds of sale shall be paid to the purchaser, or to his assignee; provided the seller, his agent, or assignee and the purchaser

may, at any time prior to sale, by agreement, waive the sale provided for in this section.

Section 3. That the seller, his agent, or assignee, mentioned in Section 2 of this Act, may become bidder or bidders and purchaser or purchasers at the sale provided for therein.

Section 4. That should the property, at the sale provided for in said Section 2 of this Act, fail to realize a sum sufficient to satisfy the debt or claim and expenses, the balance still remaining due shall be and continue a valid indebtedness against the original purchaser.

Section 5. That should the seller, or his assignee, having regained possession of said property, fail to advertise and sell the same as provided by Section 2 of this Act (unless said sale is waived as provided in said Section 2), the original purchaser may recover from the original seller that part of the consideration paid in an action, before any justice of the peace or court having jurisdiction of the amount.

Section 6. That should the property, sold under this Act, realize an amount more than sufficient to satisfy the claim of the original seller and the expenses of advertisement and sale, and the balance be not paid to the original purchaser or his assignee, as above provided in Section 2 of this Act, then the original purchaser may have and recover said balance from said original seller by action before any justice of the peace or court having jurisdiction of the amount. Laws of 1915, Chap. 81.

TEXAS.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state, and are governed by the rules regulating chattel mortgages. Vernon's Sayles' Civil Statutes, Articles 5654-5656, 5661, as amended by Laws 1917, Chap. 153 (See Fixtures). Living Pub. Co. v. Johnson et al, 68 Tex. 273, 4 S. W. 532; Merchants etc. Bank v. Thomas & Son, 69 Tex. 237, 6 S. W. 565; Parlin & One v. Harrell, 8 Tex. Civ. App. 368, 27 S. W. 1084; Parlin & One v. Moline Plow Co., 27 S. W. 1087, (no State Cit.); Avery et al v. Mansur etc. et al, 37 S. W. 466, (Tex. Civ. App.), (no State Cit.); Bowen et al v. Lansing Wagon Works, 91 Tex. 385, 43 S. W. 872; Mansur etc. v. Beeman etc. et al, 45 S. W. 729, (Tex. Civ. App.), (no State Cit.); Mechanic's Bank etc. v. Gullett Gin Co., 48 S. W. 627, (Tex. Civ. App.), (no State Cit.); Parlin & One v. Davis, 74 S. W. 951, (Tex. Civ. App.), (no State Cit.); Sanger v. Jessie French Piano Co., 75 S. W. 39, (Tex. Civ. App.), (no State Cit.); Wing & Son v. Padgett, 160 S. W. 422, (Tex. Civ. App.); In re: Avery & Sons Plow Co., 202 Fed. 996; In re: Studebaker Bros., 202 Fed. 1000; In re: Raney, 202 Fed. 1000; In re: Texas Harvester Co., 202 Fed. 1002; In re: Texas Moline Plow Co., 202 Fed. 1003. See also: Hall v. Keating Implement Co., 33 Tex. Civ. App. 526, 77 S. W. 1054.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the

goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Knittel v. Cushing, 57 Tex. 354; Abacock v. St. Louis Foundry, 59 Tex. 514; Farmers Natl. Bk. v. Henderson, 29 S. W. 562, (Tex. Civ. App.), (no State Cit.); Harrold v. Barwise, 10 Tex. Civ. App. 138, 30 S. W. 498; Eason v. DeLong et al, 38 Tex. Civ. App. 531, 86 S. W. 347.

Acknowledgment or Proof.

Property not attached to real estate.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing or recording, but in order to make it valid as against bona fide purchasers from and lien creditors of vendee there must be a filing. It is not necessary that the original instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed. (See Fixtures).

Recording or Filing.

Property not attached to real estate.

It is not necessary to record conditional contracts of sale in this state, but in order to hold title as against bona fide purchasers from and lien creditors of the vendee there must be a filing. The law provides that such filing must be made forthwith, and this means with reasonable diligence after the contract becomes binding upon the parties, considering the distance it must be sent and other features. If the vendee be a resident of the state the proper filing officer is the county clerk of the county where he resides; but if he is not such resident then with the like officer of the county where the property shall be situated.

Where the original contract is sent for filing it is not necessary that it should have been acknowledged by the ven-

dee or vendor not that it be signed or proven by a subscribing witness. If, however, a copy is sent to be filed the original must accompany same and must have been signed by two subscribing witnesses to vendee's signature, or have been acknowledged by vendee in person. Detail is therefore avoided by sending the original for filing. Vernon's Sayles' Civil Statutes, Articles 5654-5656, 5661, as amended by Laws 1917, Chap. 153. Griffith & One v. Morrison & One, 58 Tex. 46; Hall & Brown Machine Co. v. Brown, 82 Tex. 469, 17 S. W. 715; Wing & Son v. Padgett, 160 S. W. 422; Baker v. Smelser, 88 Tex. 26, 29 S. W. 377; Cameron Ice Co. v. Wallace, 21 Tex. Civ. App. 141, 50 S. W. 628; Garretson v. De Poyster et al, 16 S. W. 106, (Tex. Civ. App.), (no State Cit.). (See Fixtures).

Recording Fee.

The fee for filing a conditional sale contract is 25 cents. Vernon's Sayles' Civil Statutes, Art. 3860.

Re-Recording or Renewal.

Such a contract is valid for the term of six years. There is a provision for renewal after that time, but for what additional period is not stated. Such renewal is effected by the owner or holder of such contract, his agent or attorney filing within three months before the end of such six years, with the county clerk where such contract was filed, an affidavit in writing stating that such debt has not been paid, and the amount still due thereon. Fee for renewal 25 cents. Vernon's Sayles' Civil Statutes, Articles 3860, 5662.

Discharge.

The law requires that a chattel mortgage shall be released after payment in full, but there is no express penalty for failure to make such a discharge. This law undoubtedly applies to conditional contracts of sale as they are held to be chattel mort-

gages. Upon request of any proper party, therefore, a satisfaction should be entered as otherwise any person injured could undoubtedly collect his actual damages.

The fee for discharging such a contract is 25 cents. Vernon's Sayles' Civil Statutes, Articles 3860, 5656, 5659.

Criminal Liability of Vendee.

It is a crime, if done with intent to defraud, to remove from the state, or to sell or dispose of property held under conditional sale contract punishable by imprisonment in the penitentiary for not less than two years, and not more than five years. Where the person making such instrument shall remove the property covered thereby from the county where situated, or otherwise sell or dispose of same without the written consent of the vendor, then such vendor shall be entitled to possession of the said property and to have same sold for the payment of his debt, whether same has become due or not. Vernon's Criminal Statutes, Article 1430. Vernon's Sayles' Civil Statutes, Article 5660.

Loss. Who Must Bear.

No cases found.

Fixtures.

When any machinery or other manufactured article is susceptable of being attached to the realty in such a way as to become a fixture thereto, and is located upon real estate in such manner as the same may be deemed a fixture thereto, and at the time of its location upon such real estate there is a lien or mortgage evidenced by written instrument, or any instrument, reserving title in such machinery or other manufactured article to secure an indebtedness thereon, executed by the purchaser or owner of such machinery or other manufactured article at the time of its location on such real estate, and the in-

strument evidencing said lien, mortgage or reservation of title contains a description of said machinery or other manufactured article, as well as the real estate upon which it is to be located or situated, reasonably sufficient to identify said real estate, and such instrument is registered under the provisions of this act, then the registration of such instrument evidencing said lien, mortgage or reservation of title as provided for by this act, shall be notice to all persons thereafter dealing with or acquiring any right or interest in said machinery, or other manufactured article, or the realty upon which the same is located or other improvements or property situated on said real estate, of all of the rights of the owners or holders of the indebtedness secured by said instrument the same as if recorded at length in the deed records or records of mortgages upon realty of the county where the real estate is situated, and such lien, mortgage or reservation of title upon or to such machinery or other manufactured article shall be as to such machinery or other manufactured article superior to any lien or rights existing in any one to said real estate or other improvements or other property located and situated thereon existing at the time of the location of said machinery or other manufactured article thereon, but nothing herein contained shall be held to give the holder of such lien, mortgage or reservation of title any right or claim upon the real estate save and except the right to establish and foreclose his lien, mortgage or reservation of title upon such machinery or other manufactured article, and to enforce his rights thereto under the instrument evidencing his lien, mortgage or reservation of title, as in other cases of liens on personal property hereunder.

Also that all such instruments shall be endorsed on the back thereof, to wit: "Liens on machinery situated on realty," and shall be registered in the county where the real estate is located in the same manner as other chattel mortgages except that there shall be kept, indexed and recorded, as now herein provided for chattel mortgages, a separate book to be endorsed "Chattel Mortgage records on realty." The record thereof shall in addition to the other requirements of this act contain a brief

description of said real estate to which said fixtures are to be attached. Vernon's Sayles' Civil Statutes, Article 5661 as amended by Laws 1917, Chapter 153.

Landlord's Lien.

A landlord's lien for rent does not attach to goods, wares and merchandise of a merchant, trader or mechanic sold and delivered to him (the tenant) in the regular course of business. A distress for rent in the ordinary sense would undoubtedly not lie against conditionally sold property whether the contract be filed or otherwise; but the landlord whose rent accrues after such property is moved upon his premises, is a creditor of vendee, and may attach same for such debt, provided the contract of conditional sale shall not have been filed before the rent accrues. It is always advisable to file such contract forthwith and before vendee gets possession when no question can arise. Vernon's Sayles' Civil Statutes, Articles 5475, 5491. Key v. Brown, 67 Tex. 300, 3 S. W. 443; Rogers v. Griggs, 29 S .W. 654, (Tex. Civ. App.), (no State Cit.); Brady v. Nagle et al, 29 S. W. 943, (Tex. Civ. App.), (no State Cit.).

Notes.

The giving of notes under conditional sale contract does not ordinarily affect the security, but not to great a part of the contract agreement should be included in the notes, and additional provisions should not be found therein or it may become necessary to file same. The sale of such notes with a transfer or assignment of the contract to the same party has the effect to vest title to the property in question in vendee. Merchants etc. Bank v. Thomas & Son, 69 Tex. 237, 6 S. W. 565; Parlin & Orendorff Co. v. Harrell, 8 Tex. Civ. App. 368, 27 S. W. 1084; Parlin & Orendorff Co. v. Moline Plow Co., 27 S. W. 1087, (Tex. Civ. App.) (no State Cit.).

Election of Remedies.

Where vendor has two or more concurrent remedies and takes advantage of one, the others are deemed to be waived. Foreclosure as upon a chattel mortgage, or of the common law lien exists in this state. Merchants etc. Bank v. Thomas & Son, 69 Tex. 237, 6 S. W. 565; Parlin & One v. Harrell, 27 S. W. 1087, (no State Cit.); Abacock v. St. Louis Typefoundry, 59 Tex. 514; San Antonio Brew. Assn. v. Arctic Machine Co. etc., 81 Tex. 99, 16 S. W. 797; Bensinger etc. v. Cain, 18 S. W. 136, (Tex. Civ. App.), (no State Cit.); Clark v. West Pub. Co., 26 S. W. 527, (Tex. Civ. App.), (no State Cit.); Loftus v. King, 23 Tex. Civ. App. 36, 56 S. W. 109; Hollenberg Music Co. v. Morris, 35 S. W. 396, (Tex. Civ. App.), (no State Cit.); Moore et al v. Masterson, 19 Tex. Civ. App. 308, 46 S. W. 855; Eason et al v. Garrison & One, 36 Tex. Civ. App. 574, 82 S. W. 800.

Repossession and Refund.

A conditional sale contract in Texas is in law a chattel mortgage, and when vendee is in default the equity existing in his favor can only legally be cut off by a foreclosure proceeding. It is possible that he might waive such rights by a contract entered into after default, whereby a valid consideration passed to him; but no decision has been found upholding such a course. Harling v. Creech, 88 Tex. 300, 31 S. W. 357; Henderson v. Mahoney, 31 Tex. Civ. App. 539, 72 S. W. 1019.

Railroad Equipment.

Railroad equipment or rolling stock may be delivered under conditional sale contract or lease with option to purchase. The contract must be in writing signed by all parties and in order to be valid as against creditors of, or subsequent purchasers and mortgagees or lien holders in good faith from, the vendee or lessee or bailee; the original must be recorded with the secretary of state. (There seems to be no requirement for witnessing, acknowledgment or proof). When the amount of such

contract shall have been paid in full and its terms and conditions performed, the vendor, or lessor or bailor, or his or its assignee may make a declaration to that effect, which said declaration may be made on the margin of the record of the contract, duly attested or by a separate instrument in writing acknowledged by the vendor, lessor or bailor or his or its assignee. Fees to the secretary of state are $5.00 for recording such contract or declaration, and $1.00 for noting such declaration, on the margin of the record. Vernon's Sayles' Civil Statutes, Article 5655.

UTAH.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are not provided for by statute law in this state except as to railroad equipment, but are recognized as valid by court decisions. Shoshonetz v. Campbell, 7 Utah 46, 24 Pac. 672; Hirsch & One v. Steele, 10 Utah 18, 36 Pac. 49; Detroit Heating etc. Co. v. Stevens, 16 Utah 177, 52 Pac. 379; Freed Furniture & Carpet Co. v. Sorensen, 28 Utah 419, 79 Pac. 564; Walker v. Consolidated Wagon etc. Co., 41 Utah 255, 126 Pac. 308; I. X. L. Stores v. Moon, 162 Pac. 622.

How Executed.

They should be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract needs no subscribing witness or acknowledgment, or proof in order to make it valid as to the parties thereto.

Recording or Filing.

No recording or filing is required in order that a conditional sale contract shall be valid as to all third parties.

Recording Fee.

No provision.

Re-Recording or Renewal.

No provision.

Discharge.

No provision.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

No cases found.

Landlord's Lien.

A landlord has no lien for rent on property located upon his premises when such property is covered by a conditional sale contract. Compiled Laws, §§ 1407-8, 1414. Passow v. Emery, 37 Utah 49, 106 Pac. 935.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such contract and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes or if they contain additional provisions, then it may become necessary

to record same and the notes are made non-negotiable. Lippincott & Co. v. Rich et al, 22 Utah 196, 61 Pac. 526; Standard Steam Laundry v. Dole, 22 Utah 311, 61 Pac. 1103.

Election of Remedies.

The question as to whether a vendor under conditional sale contract may sue for a money judgment, and if no collection is made, afterwards replevin the property, has not been passed upon by the courts of this state.

Repossession and Refund.

No cases found.

Railroad Equipment.

A conditional contract of sale, or lease with option to purchase, railroad or street railway equipment must in order to be valid as to subsequent judgment creditors, and subsequent bona fide purchasers for value and without notice, be in writing signed by all parties, and acknowledged by vendee or lessee or bailee and be filed for record with the secretary of state and each locomotive engine or car so sold, leased, or hired, shall have plainly marked on each side thereof the name of the vendor, or lessor, or bailor, in letters at least one inch in size followed by the word "owner" or "lessor" or "bailor" as the case may be. The fee for recording such a contract is fifty cents for the first folio (100 words) and twenty cents for each additional folio. When such contract has been paid in full the vendor, lessor or bailor, or his or its assignee shall make a declaration in writing to that effect, which may be made either on the margin of the record duly attested, or by a separate instrument acknowledged by the vendor, or lessor or bailor or his or its assignee, which must be recorded.

Fee for release on margin 25 cents. Compiled Laws, §§ 456 x 2-3, 973.

VERMONT.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Public Statutes, § 2663. Armington v. Houston, 38 Vt. 448; Morgan v. Kidder & One, 55 Vt. 367; Collender Co. v. Marshal, 57 Vt. 232; Church v. McLeod, 58 Vt. 541, 3 Atl. 490; Barrett etc. v. Kelley, 66 Vt. 515, 29 Atl. 809; French v. Osmer, 67 Vt. 427, 32 Atl. 254; Lord etc. v. Buchanan, 69 Vt. 320, 37 Atl. 1048; Town of Grand Isle v. McGowan et al, 88 Vt. 140, 92 Atl. 6; Rogers v. Whitney, 91 Atl. 419.

How Executed.

The law provides that there shall be an instrument in writing containing a memorandum of the agreement, which shall be signed by the purchaser and shall show the amount to be paid. In other words the contract must be in writing signed by the vendee but does not need to be signed by the vendor. Public Statutes, § 2663. Whitcomb v. Woodworth, 54 Vt. 544; Nye v. Daniels, 75 Vt. 81, 53 Atl. 105; Kimball v. Costa, 76 Vt. 289, 56 Atl. 1009.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof, or filing, or recording but in order to make it valid, and to hold title as against attaching creditors or subsequent purchasers without notice it is necessary that same be recorded.

Recording or Filing.

In order to protect the vendor as against attaching creditors, or subsequent purchasers without notice, the original contract must be recorded, within 30 days after delivery of the property, with the town clerk of the town where the purchaser resides if within the state, and if not such resident then in the same office of the town where the vendor resides. It is not necessary that such contract be acknowledged by the vendee, nor that it be signed or proven by a subscribing witness in order to be recorded. There is no provision for filing such a contract. Public Statutes, § 2663. Fairbanks etc. Co. v. Davis & One, 50 Vt. 251; McPhail v. Gerry, 55 Vt. 174.

Recording Fee.

The fee for recording such an instrument is 10 cents per folio of one hundred words; no charge to be less than 25 cents. Public Statutes, § 6257.

Re-Recording or Renewal.

The contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

The vendor shall after full payment of the contract, and upon tender of reasonable fees for such service, discharge such lien within ten days after notice, or be liable to a $10.00 fine and all damages occasioned by his failure so to do. Such contract may be discharged by an entry acknowledging satisfaction of the lien and made by the vendor, his executor, attorney or assigns on the page of the book where the contract is recorded, or by a like entry on the writing creating the lien. Or the contract may be discharged by recording a release executed by the vendor or his representatives as named above.

Fee for release, 10 cents per folio of one hundred words. Public Statutes, §§ 2664-65.

Criminal Liability of Vendee.

If a person in possession of personal property which has a duly recorded lien reserved thereon, sells, conceals or removes such property from the state without consent of the vendor and with intent to defraud, etc., he shall be fined a sum not exceeding double the value of the property, one-half of such fine to be paid to the vendor and one-half to the municipal treasury liable for the payment of the costs of such prosecution, i. e., of the town, city or village where prosecution takes place. Public Statutes, §§ 2670-71.

Loss, Who Must Bear.

If property held under conditional sale agreement shall be destroyed before payment in full, such fact does not relieve the vendee from his obligation. Fuller v. Bussell, 34 Vt. 107; La Valley v. Ravenna, 78 Vt. 152, 62 Atl. 47.

Fixtures.

Where personal property sold under conditional contract of sale has been fastened to a building in such manner that it may be removed without material injury to the building or to itself, the vendor is entitled to possession upon failure of the contract payments. If, however, the property has been so attached to the building as to become a material part thereof, and so it cannot be removed without great injury to the building or to itself, the vendor cannot recover the property but must bring an action in equity to have the balance unpaid on the contract declared a lien against the building itself. Davenport v. Shants et al, 43 Vt. 546; Buzzell v. Cummings, 61 Vt. 213, 18 Atl. 93; Page v. Edwards, 64 Vt. 124, 23 Atl. 917; Paine v. McDowell, 71 Vt. 28, 41 Atl. 1042.

Landlord's Lien.

A landlord in this state has no lien for rent upon personal property located in his premises.

Notes.

A conditional sale agreement may be embodied in a note form but on account of the requirement for recording it is advisable to secure an ordinary form of contract which can be recorded and allow the notes merely to evidence the deferred payments. Where notes are given following a written contract the presumption of payment arises, but this may be rebutted. Page v. Edwards, 64 Vt. 124, 23 Atl. 917; Kimball v. Costa, 76 Vt. 289, 56 Atl. 1009.

Election of Remedies.

Where two or more remedies exist, and vendor seeks to enforce one of them, the others are lost. Root v. Lord, 23 Vt. 568, Matthews v. Lucia, 55 Vt. 308.

Repossession and Refund.

Thirty days after the terms of a conditional contract of sale are broken, the vendor or his assigns may cause the property to be sold, by a public officer at public auction in the town where vendee resides or where such property is located; ten days notice of such sale shall be given by posting written notice thereof in two public places in said town, and by serving such notice personally on the vendee if a resident of the town or by mail if he is not, at least ten days before the date of sale. Out of the proceeds of such sale the vendor shall be paid the amount due under his contract with costs and expenses, and the balance must be paid over to the vendee. Any vendor who takes possession of the property under a conditional contract of sale and does not sell it as above provided shall be liable for con-

version. The requirements as to sale can however, undoubtedly be avoided by means of a written contract between the vendee and vendor, wherein the vendor agrees to release the vendee from further payments and as a consideration therefor the vendee releases the vendor from his obligation to make a sale. Public Statutes, §§ 2666-67. Taylor v. Finley, 48 Vt. 78; Roberts v. Hunt, 61 Vt. 612, 17 Atl. 1006; Moses v. Rogers, 62 Vt. 84, 19 Atl. 118; Clark v. Clement, 75 Vt. 417, 56 Atl. 94.

Railroad Equipment.

Conditional contracts of sale, or leases with option to purchase, covering railroad or street railway equipment or rolling stock, must be in writing, and in order that same shall be valid as against subsequent judgment creditors, or subsequent bona fide purchasers for value and without notice, the contract must be acknowledged by the vendee, lessee, or bailee as the case may be, or be duly proved in the same manner as a deed of real estate, and be recorded with the secretary of state. Each locomotive engine or car so sold, leased or hired shall have the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word "owner," "lessor" or "bailor" as the case may be.

Upon payment in full a declaration in writing to that effect shall be made by the vendor, lessor or bailor or his or its assignee, which declaration may be made on the margin of the record duly attested, or it may be by a separate instrument acknowledged and recorded. Public Statutes, §§ 4389-90.

VIRGINIA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Virginia Code, § 2462, Sub. Div. I. Hash v. Lore & Others, 88 Va. 716, 14 S. E. 365; Arbuckle Bros. v. Gates & Brown, 95 Va. 802, 30 S. E. 496; Exposition Arcade Corp. v. Lit Bros., 113 Va. 574, 75 S. E. 117; Levy & Co. v. Davis, 115 Va. 814, 80 S. E. 791.

How Executed.

They must be in writing, and be signed by all parties thereto. Virginia Code, § 2642, Sub. Div. I. Colonial Trust Co. v. Thorpe, 194 Fed. 390; Corbett v. Riddle, 209 Fed. 811.

Acknowledgment or Proof.

Such a contract needs no subscribing witness, nor does it require acknowledgment or proof; but in order to hold title as against creditors of, and purchasers from the vendee, there must be a docketing.

Recording or Filing.

The laws of this state provide for docketing certain information regarding conditional sale contracts, so that same may be valid as to creditors of, and purchasers from vendee. There is no definite time provided within which such docketing shall be made, but in order that all questions may be avoided the acts should be done before vendee secures possession of the prop-

erty. The docketing official is the clerk of the circuit court for the county where the property may be located, unless same be in a corporation or city having a population of 5,000 or over, when he will be the clerk of the corporation or city court; except in the city of Richmond where the chancery court clerk is the proper officer.

The original contract must be sent, and from it shall be taken and placed in the record book six essential features (1) Date of Contract. (2) Amount due thereon. (3) When payable. (4) How payable. (5) A brief description of the goods or chattels. (6) Names of vendor and vendee. Virginia Code, § 2462, Sub. Div. I.

If any person transact business as a trader with the addition of the words "Factor," "Agent," "and Company" or "& Co." and fail to disclose the name of his principal or partner by a sign in letters easy to be read placed conspicuously at the house where such business is transacted, and also by a notice published for two weeks in a newspaper (if any) printed in the city, town or county wherein the same is transacted; or if any person transact such business in his own name without any such addition, all the property, stock and choses in action acquired or used in such business, shall as to the creditors of any such person be liable for the debts of such person. This section shall not apply to a person transacting such business under a license to him as an auctioneer or commission merchant. Virginia Code, § 2877.

As to persons (individuals) transacting business in Virginia, who buy property on the conditional sale or installment plan, great care should be exercised concerning the credit standing of such customers. The above quoted sections of the Code are in conflict, and no conditional sale contract properly docketed before such a vendee secured possession of the property, has been passed upon by the courts, where the rights of such vendor as against the creditors of such a vendee were involved. It seems advisable to say that such a vendor should be protected, at least if his contract is properly docketed, but the

law is not definitely settled upon this point. Benjamin & Co. v. Madden, 94 Va. 66, 26 S. E. 392; Hoge et al v. Turner, 96 Va. 624, 32 S. E. 291; Edmunds v. Hobbie Piano Co., 97 Va. 588, 34 S. E. 472; Partlow v. Lickliter, 100 Va. 631, 42 S. E. 671; National Cash Register Co. v. Burrow, 110 Va. 785, 67 S. E. 370; National Cash Register Co. v. Norfolk City Realty Co., 110 Va. 791, 67 S. E. 372; The Liquid Carbonic Co. v. Whitehead, 115 Va. 586, 80 S. E. 104.

Recording Fee.

The fee for docketing such a contract and indexing same to all parties is 25 cents. Virginia Code, § 2462, Sub. Div. I.

Re-Recording or Renewal.

The contract is valid for the term of five years; there is no provision for re-recording or renewal.

Discharge.

Such a contract must be discharged after payment and a failure on the part of the vendor to make such discharge after receiving fifteen days' notice so to do subjects him to a penalty of $5.00, payable to the vendee. The contract may be discharged either by the vendor, or his duly authorized agent or attorney, appearing in person before the clerk and marking the contract "Released" on the page of the book where docketed, which action shall be attested by the clerk, or otherwise by a written request to discharge sent to the clerk in whose office the instrument is docketed, such request being signed by the vendor, his agent or attorney, and showing that the amount under the contract has been paid in full. Such a writing should be in the form of a release. Fee for release, 25 cents. Virginia Code, §. 2462 A.

Criminal Liability of Vendee.

Selling or disposing of property held under conditional contract of sale, unless with the written consent of the vendor, is a crime punishable as larceny. Where the value of the property is less than $50.00 the punishment is by imprisonment in the county jail for not less than fifteen days, nor more than six months, or by a fine of not less than $5.00 nor more than $100 or both. Where the value of the property is $50.00 or more, the punishment is by imprisonment in the penitentiary for not less than one year nor more than ten years. Virginia Code, §§ 3707, 3719 A.

Loss, Who Must Bear.

Where property is delivered under conditional sale contract and is destroyed before payment in full, the loss falls on vendee. Exposition Arcade Corporation v. Lit Bros., 113 Va. 574, 75 S. E. 117.

Fixtures.

Where property delivered under conditional sale contract has been fastened to a building in such a manner that same may be removed without material injury to the building or to itself then upon default, vendor is entitled to possession. If, however, the property has been so attached to a building as to become a material part thereof and incapable of being removed without great injury to the building or to itself, it cannot be repossessed and vendor's remedy would be by action in equity to charge the amount unpaid as a lien upon the building. Monarch Laundry v. Westbrook, 109 Va. 382, 63 S. E. 1070; Holt v. Henley, etc., 232 U. S. 637.

Landlord's Lien.

A landlord's lien for rent of the building in which property held under conditional contract of sale is placed is prior to such

contract unless same has been docketed before the property is moved upon his premises. Virginia Code, § 2791.

Notes.

No cases found.

Election of Remedies.

No cases found.

Repossession and Refund.

No cases found.

Railroad Equipment.

A conditional sale contract covering railroad equipment or rolling stock, in order that same shall be valid as to creditors of and purchasers for value without notice from vendee must be in writing and admitted to record in the clerk's office of the circuit or corporation court of the county or corporation where the principal office of the vendee is located within the state, or if in the city of Richmond in the office of the clerk of the chancery court. A copy of such contract must also be filed with the state corporation commission, and each locomotive or car so sold must be plainly and permanently marked with the name of the vendor on both sides thereof followed by the word "owner."

In order to be filed for record the contract must be acknowledged by the vendee in person.

The provisions for fees and discharge of ordinary conditional sale contracts apply as well to these. Virginia Code, § 2462, Sub. Div. I, 2462 A.

WASHINGTON.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Rem. 1915, Code, § 3670. Cherry v. Arthur, 5 Wash. 787, 32 Pac. 744; Kidder v. Wittler-Corbin Machine Co., 38 Wash. 179, 80 Pac. 301; National Cash Register Co. v. Petsas, 43 Wash. 376, 86 Pac. 662; Gennelle v. Boulais, 48 Wash. 310, 93 Pac. 421; Wittler-Corbin Co. v. Martin, 47 Wash. 123, 91 Pac. 629; Wittler-Corbin Co. v. Martin, on appeal, same effect, 53 Wash. 65, 101 Pac. 494; First Church etc. v. Southern S. & C. Co., 76 Wash. 367, 136 Pac. 127; Lundberg v. Kitsap County Bank, 79 Wash. 75, 139 Pac. 769; Eilers Music House v. Fairbanks, 80 Wash. 379, 141 Pac. 885; Eilers Music House v. Archer, 81 Wash. 698, 142 Pac. 453; Winton Motor Carriage Co. v. Blomberg, 84 Wash. 451, 147 Pac. 21; Crosier v. Cudihee et al, 85 Wash. 237, 147 Pac. 1146; Duarte v. Minnick et al, 85 Wash. 539, 148 Pac. 600; Norman v. Meeker, 91 Wash. 534, 158 Pac. 78; Peterson v. Chess, 92 Wash. 682, 159 Pac. 894; Sunel v. Riggs, 160 Pac. 950; Stotts v. Puget Sound etc. Co., 162 Pac. 519.

How Executed.

They must be in writing signed by all parties thereto. Edison General Electric Co. v. Walter, 10 Wash. 14, 38 Pac. 752; In re: Osborn, Purcell Safe Co. v. Parker, 196 Fed. 257; In re: Pac. Electric & Automobile Co., 224 Fed. 220; In re: Frankel, 225 Fed. 129; In re: Covington Lbr. Co., 225 Fed. 444.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without a subscribing witness, acknowledgment or proof, or filing or recording; but in order to make it valid and to hold title as against bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors, whether or not such creditors have or claim a lien upon such property, it must be filed. It is not necessary that the contract be acknowledged by either the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed.

Recording or Filing.

There is no provision for recording such a contract in this state, but in order to hold title as against the parties above named, it is necessary that the original contract, signed by the vendor and vendee, or a memorandum so signed, be filed in the county auditor's office of the county where the vendee resides. The filing must be made within ten days after the vendee takes possession. Rem. 1915, Code § 3670; American Multigraph Sales Co. v. Jones, 58 Wash. 619, 109 Pac. 108; Fidalgo etc. Co. v. Brown, 61 Wash. 516, 112 Pac. 629; Sumner Iron Works v. Wolten, 61 Wash. 689, 112 Pac. 1109; Worley v. Metropolitan Motor Car Co., 72 Wash. 243, 130 Pac. 107; First National Bank of Everett v. Wilcox, 72 Wash. 473, 130 Pac. 756; Casey-Hedges Co. v. Wilcox, 72 Wash. 605, 131 Pac. 205; Burroughs Adding Machine Co. v. Wilcox, 72 Wash. 700, 131 Pac. 206; North Coast Dry Kiln Co. v. Montecoma etc., 82 Wash. 247, 144 Pac. 58; Anderson et al v. Langford, 91 Wash. 176, 157 Pac. 456; Chilberg v. Smith, 174 Fed. 805.

Recording Fee.

The fee for filing such a contract has been somewhat in doubt, either 25 or 50 cents, as there were two sections, of the code covering it; but on September 27, 1912, the attorney general rendered his opinion in favor of the larger amount, and

that is the sum now usually charged. Rem. 1915, Code §§ 3671, 3936.

Re-Recording or Renewal.

Such a contract is valid for the term of six years. There is no provision for re-recording or renewal.

Discharge.

No provision.

Criminal Liability of Vendee.

It is a crime to injure or destroy, sell, conceal, dispose of or remove from the county where same is situated when possession passes to the vendee, property covered by conditional sale contract. Such acts are punishable as a misdemeanor by imprisonment in the county jail for not more than one year, or by a fine of not more than $1000.00, or both. Rem. 1915, Code, § 2267, 2629.

Loss, Who Must Bear.

In those instances where property conditionally sold shall be lost, injured or destroyed before payment without fault of the vendee, such loss falls on the vendor. It would be possible undoubtedly to shift this obligation by an appropriate clause in the contract especially providing that vendee shall not be relieved from payment because of such happenings. Arthur & Co. v. Blackman, 63 Fed. 536.

Fixtures.

Where property held under conditional contract of sale is attached to a building in such manner that it may be removed without material injury to the building or to itself, the vendor

on failure of the contract payments, is entitled to possession. If, however, the property cannot be removed without great damage to the building or to itself, the vendor cannot take possession. His remedy then is by an action in equity to enforce a lien against the building for the balance unpaid. Cherry v. Arthur, 5 Wash. 787, 32 Pac. 744; Wade v. Donau Brewing Co., 10 Wash. 284, 38 Pac. 1009; Washington N. B. v. Smith, 15 Wash. 160, 45 Pac. 736; German Savings Society v. Weber, 16 Wash. 95, 47 Pac. 224.

Landlord's Lien.

There is no provision of law giving landlords a lien for rent against personal property located upon their premises.

Notes.

Where notes are given under a conditional contract, care should be exercised in making a transfer thereof, for otherwise title to the property will be deemed to have passed to the vendee. The safe rule for guidance is to endorse the notes and assign the contract in writing to the same party. This rule might be followed with profit in all states and under all circumstances. Winton Motor Car Co. v. Broadway Auto Co., 65 Wash. 650, 118 Pac. 817; MacLeod v. Aberdeen Brewing Co., 82 Wash. 74, 143 Pac. 440.

Election of Remedies.

Where a vendor has two or more concurrent remedies and seeks to enforce one the others are usually deemed to be waived or abandoned, although circumstances may vary the rule. Jones v. Reynolds, 45 Wash. 371, 88 Pac. 577; Ramey v. Smith et al, 56 Wash. 604, 106 Pac. 160; Stewart & Homes Truck Co. v. Reed & One, 74 Wash. 401, 133 Pac. 577; Thompson Co. v. Murphine, 79 Wash. 672, 140 Pac. 1073; Eilers Music House v. Douglass, 90 Wash. 683, 156 Pac. 937.

Repossession and Refund.

There appears to be no fixed rule in this state regarding the liability of vendor to make a refund after repossession. Where the contract shall provide that no repayment is required, that feature will undoubtedly be enforced. Eilers Music House v. Oriental Co., 69 Wash. 618, 125 Pac. 1023; Secor v. Close as Sheriff et al, 83 Wash. 77, 145 Pac. 56; Jennings v. Schwartz, 86 Wash. 202, 149 Pac. 947; Breaks v. Spokane Auto Co., 93 Wash. 143, 160 Pac. 291.

Railroad Equipment.

Conditional contracts of sale, or leases with option to purchase, covering railroad equipment or rolling stocks must be in writing, and in order that same shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, the contract must be acknowledged (does not state by whom) and be filed for record in the office of the county auditor of the county in which at the time of the execution thereof is situated the principal office of the vendee or lessee within the state. Each locomotive engine or car so sold or leased shall have the name of the vendor or lessor plainly marked on each side thereof followed by the word "owner" or "lessor" as the case may be.

Upon payment in full a declaration in writing to that effect shall be made by the vendor or his assignee, which declaration may be made on the margin of the record duly attested, or it may be made by a separate instrument acknowledged and recorded.

Fee for recording 15 cents per folio. Fee for marginal release 25 cents. Rem. 1915, Code, §§ 3936 8741-42; Brady & Son v. Bell, 162 Pac. 865.

WEST VIRGINIA.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute law in this state. Code of W. Va., § 3101. Hyer v. Smith, 48 W. Va. 550, 37 S. E. 632; Troy Wagon Co. v. Hutton, 53 W. Va. 154, 43 S. E. 135.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor. Baldwin v. Van Wagner, 33 W. Va. 293, 10 S. E. 716; Toledo Scale Co. v. Bailey, 90 S. E. 345.

Acknowledgment or Proof.

No subscribing witness, acknowledgment or proof is required upon such a contract for any purpose.

Recording or Filing.

There is no provision for filing in this state, but in order to hold title as against creditors of, and purchasers without notice from vendee, a notice of the reservation must be recorded in the miscellaneous record book in the office of the county court clerk of the county where the property is located. It is

not necessary to record the original nor yet a copy thereof, although either is proper. A memorandum of the agreement signed by the vendor, and without acknowledgment or proof may be used. There has been no court interpretation as to just what information such a notice shall contain, but the following form is believed to be sufficient:

NOTICE OF RESERVATION OF TITLE.

NOTICE IS HEREBY GIVEN: That .....
of ..... and ..... of .....
did on ..... make a contract covering the following described property, to wit:

(Describe property.)

whereby possession thereof is to be delivered to .....
.....and title thereto is to remain in
.....until paid for in full in cash.
The amount of said contract is $.....upon which remains unpaid the sum of $.....to be paid as follows:

(Describe payments.)

.....
Vendor.

Dated at .....
this ..... day of ..... 191....

The time for recording such notice is not definitely fixed, but in order to avoid all question same should be made before vendee secures possession. In case the property is removed to another county, a like memorandum must be recorded there within three months, in the office of the clerk of the county court. Code of W. Va., §§ 3101, 3105. Hatfield v. Haubert, 51 W. Va. 190, 41 S. E. 144; Webster Lbr. Co. v. Keystone Lbr. Co., 51 W. Va. 545, 42 S. E. 632.

Recording Fee.

Fee for recording and indexing reservation of title one dollar. It appears to make no difference what the length of such a contract or notice may be, the fee is the same. Code of W. Va., Supplement of 1909, § 4096.

Re-Recording or Renewal.

Conditional contracts of sale when recorded are valid for the term of ten years. There is no provision for re-recording or renewal. Code of W. Va., § 3499.

Discharge.

There is no special provision for releasing a conditional contract of sale from record, and no penalty is provided for failure to discharge same from record after payment. It is always advisable, however, to send a release on request of the vendor or other proper party, no matter in what state or under what conditions the contract is filed or recorded. The fee for discharge is 50 cents. Code of W. Va., Sup. 1909, § 4096.

Criminal Liability of Vendee.

No provision.

Loss, Who Must Bear.

No cases found.

Fixtures.

Where property sold under conditional contract of sale has been fastened to a building in such a manner that it may be removed without material injury to the building or to itself, the courts of this state have decided that on failure of the contract payments the vendor is entitled to possession. Where

however, the property has been so attached to a building as to become a material part thereof, and so that it cannot be removed without great injury to the building or to itself, the vendor cannot take possession and his remedy is by an action to have the amount unpaid charged as a lien against the building itself. Hurxthal's Ex. v. Hurxthal's Heirs et al, 45 W. Va. 584, 32 S. E. 237; Detroit Steel Co. v. Sistersville Brewing Co., 233 U. S. 712.

Landlord's Lien.

A landlord's lien for rent of the building in which property covered by conditional contract of sale is placed is prior to such contract unless same is recorded before the property is moved upon his premises. Bartlett v. Loundes, 34 W. Va. 493, 12 S. E. 762; Huffard v. Akers, 52 W. Va. 21, 43 S. E. 124; Thomas Co. v. Lewis Hubbard & Co., 90 S. E. 816; Jeffry Mfg. Co. v. Mound Coal Co., 215 Fed. 222.

Notes.

No cases found.

Election of Remedies.

No cases found.

Repossession and Refund.

No cases found.

Railroad Equipment.

Where the property involved is railroad equipment or rolling stock, all the rules heretofore stated apply, except that notice of reservation must be recorded with the secretary of state, and the fee is five dollars. Code of W. Va., § 3101.

WISCONSIN.

Legal Status of Conditional Sale Contracts.

Conditional contracts of sale are provided for by statute laws in this state. The general rules do not apply fully to furniture and other household effects, for which reason the laws governing such sales will be set forth separately. (See Household Furniture). Wis. Statutes, § 2317. Wheeler & Co. v. Teetzlaff, 53 Wis. 211, 10 N. W. 155; The Rawson Mfg. Co. v. Richards, 69 Wis. 643, 35 N. W. 40; Thomas & One v. Richards, 69 Wis. 671, 35 N. W. 42; Mershon v. Moors & One, 76 Wis. 502, 45 N. W. 95; Wadleigh v. Buckingham, 80 Wis. 230, 49 N. W. 745; Aultman & Co. v. Silha & One, 85 Wis. 359, 55 N. W. 711; Hyland & One v. Bohn Mfg. Co., 92 Wis. 157, 65 N. W. 170; Owen v. Long, 97 Wis. 78, 72 N. W. 364; Mishawaka Woolen Mfg. Co. v. Teasdale, 145 Wis. 73, 129 N. W. 671; Deere Plow Co. v. Edgar, etc., 154 Wis. 490, 143 N. W. 194; Mishawaka Woolen Mfg. Co. v. Smith, 158 Fed. 885.

How Executed.

They must be in writing signed by all parties thereto. Wisconsin Statutes, § 2317. Williams v. Potter, 41 Wis. 422; Kiefer-Haessler etc. Co. v. Paulus, 149 Wis. 453, 135 N. W. 832.

See also: Sheldon Co. v. Mayers, 81 Wis. 627, 51 N. W. 1082; Kellogg v. Costello et al, 93 Wis. 232, 67 N. W. 24 Tufts v. Brace, 103 Wis. 341, 79 N. W. 414.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without subscribing witness, acknowledgement or proof, or filing or recording, but in order to make it valid and to hold title as against third persons, the original or a copy thereof must be filed.

Recording or Filing.

There is no provision in this state for recording conditional sale contracts, but same must be filed in order to hold title as against third parties, except those having notice thereof. A copy or the original may be used and no subscribing witness, acknowledgment or proof is required, but the contract must be signed by all the parties. The filing officer is the clerk of the town, city or village where the vendee resides, if a resident of the state; or if not such resident then in the clerk's office of the town, city or village where the property may be at the time of taking such contract. There is no definite time provided within which this filing must be made, but in order to avoid all question same should be done before vendee secures possession of the property. (See Household Furniture). Wisconsin Statutes, § 2317. Mershon v. Moors & One, 76 Wis. 502, 45 N. W. 95; Gilpen v. Matchett, 153 Wis. 347, 141 N. W. 235; Essley Machinery Co. v. Milwaukee Motor Co. et al, 160 Wis. 300, 151 N. W. 814.

Recording Fee.

The fee for filing a conditional contract of sale is 12 cents. Wisconsin Statutes, § 834.

Re-Recording or Renewal.

There is no provision for refiling or renewal, but the vendor's lien or title preserved by the first filing, holds the property

for one year after the last payment has become due upon the contract. Wisconsin Statutes, § 2317.

Discharge.

There is no provision requiring that ordinary conditional sale contracts shall be discharged after payment, and no penalty for failure to so discharge.

Criminal Liability of Vendee.

It is a crime to sell or dispose of chattel mortgaged property, punishable by imprisonment in the county jail for not more than six months or by a fine of not more than $100.00. There is, however, no special provision of law making it a crime to sell or dispose of property held under conditional contract of sale. Wisconsin Statutes, § 4467.

Loss, Who Must Bear.

Where property has been delivered under conditional sale contract and is lost, injured or destroyed before payment in full, even though vendee be not at fault, still his obligation to pay the balance is not ended. Osborn v. South Shore Lumber Co., 91 Wis. 526, 65 N. W. 184.

Fixtures.

Where property delivered under conditional sale contract is attached to a building in such a manner that it may be removed without material damage to the building or to itself, the vendor upon default is entitled to possession. If, however, the property cannot be removed without great damage to the building or to itself, or both, the vendor cannot take possession; but his remedy would then be through an action in equity to enforce a lien upon the building for the balance unpaid. Cooper et al v. Cleghorn et al, 50 Wis. 113, 6 N. W. 491.

See also; Kendall Mfg. Co. v. Rundle, 78 Wis. 150, 47 N. W. 364; Fuller Warren Co. v. Harter, 110 Wis. 80, 85 N. W. 698; Wolf Co. v. Kutch, 147 Wis 209, 132 N. W. 981.

Landlord's Lien.

The owner of a building has no lien for rent on personal property covered by conditional contract of sale even though the property is moved into his premises before the contract is properly filed.

Notes.

The giving of notes under a conditional sale contract does not ordinarily supersede such contract, and is only a convenient method of evidencing deferred payments. If, however, too great a part of the contract is included in the notes it may become necessary to record same, and the notes are made non-negotiable. Kimball v. Mellon, 80 Wis. 133, 48 N. W. 1100.

Election of Remedies.

Where vendor having two or more remedies seeks to enforce one of them such action will be construed an election and will extinguish the others. Cooper et al v. Cleghorn et al, 50 Wis. 113, 6 N. W. 491; Tufts v. Brace, 103 Wis. 341, 79 N. W. 414.

Repossession and Refund.

No cases found.

Railroad Equipment.

Conditional sale contracts or leases with option to purchase, railroad or street railway equipment or rolling stock, in order that same shall be valid as to all third parties, must be in writ-

ing (does not state by whom signed, but presumably by all parties) and recorded with the secretary of state (no provision for acknowledgment, but advise acknowledgment by vendee in person). The term of such contract cannot be for more than ten years. Each locomotive, car or other equipment shall have marked thereon in a conspicuous place the name of the vendor or lessor or the assignee of such vendor or lessor, followed by the word "owner," or "lessor," as the case may be. Wis. Statutes, § 1839A.

Household Furniture.

All contracts for the sale of furniture or other household effects made on condition that the title thereto shall not pass until the price has been paid in full, shall cease to be conditional sales when 50% of the purchase price has been paid, and such contract shall thereafter have all the elements and characteristics of a chattel mortgage, the vendor standing in the relation of a mortgagee and the vendee in the relation of mortgagor, and the vendee shall have all the rights of redemption, and such property shall be sold only as provided for in Section 2316A of the statutes, and subject to the penalties therein prescribed. Wisconsin Statutes 1913, §§ 1684T-53A.

All contracts for the sale of furniture or other household effects, made on condition that title thereto shall not pass until the price is paid in full, whether in the form of a lease or otherwise shall be in writing and a copy thereof shall be furnished the vendee by the vendor at the time of sale; and all payments made by or on behalf of the vendee, and all charges, whether in the nature of interest or otherwise, as they accrue shall be indorsed by the vendor upon such copy if the vendee so requests. If the vendor fails to comply with any of these provisions through negligence, his rights under such contract shall be suspended while such default continues; and if he refuses or wilfully or fraudulently fails to comply therewith he shall be deemed to have waived the conditions of such sale. The vendor upon taking possession of such furniture or effects for non-

compliance with the terms of such contract, shall furnish the vendee or other person in charge thereof an itemized statement of the account, showing the amount due thereon, and the vendee may at any time within fifteen days after such taking redeem the property so taken by paying to the vendor the full amount of the price then unpaid together with interest and all lawful charges and expenses. Said fifteen days shall not begin to run until such statement is furnished, provided the vendee or other person in charge can be found by the vendor by the exercise of reasonable care and diligence. Wisconsin Statutes, § 2319 B.

Every mortgage of personal property or a copy thereof may be filed in the office of the clerk of the town, city or village where the mortgagor resides, or in case he is a non-resident of the state then in the office of the clerk of the town, city or village where the property mortgaged may be at the time of the execution of such mortgage; such clerk shall indorse on such mortgage or copy the time of receiving the same and keep the same in his office for the inspection of all persons; such clerk shall also make the entries as required in Sub. Div. 10 of Sec. 832; provided that when such mortgage shall be of a stock of goods, wares and merchandise, or of the fixtures pertaining to the same, the mortgage or a copy of it shall in addition be filed in the office of the register of deeds of the county in which the town, city or village may be situated in the office of the clerk of which the mortgage or a copy thereof may be filed under this section, except that where any such town, city or village is situated within two counties the said mortgage or copy shall be filed in the office of the register of deeds of either one of such counties, at the option of the person filing the same; and the register of deeds shall indorse on such copy filed in his office the time of receiving the same and keep that same in his office for the inspection of all persons, and shall provide and keep a book and make the entries in the same manner as in the case of such clerk, and shall receive the same compensation for such filing and entry as is allowed by law to such clerk for like services. Mortgages so filed in the office of such clerk, and in

the proper case in the office of the register of deeds, shall be valid and binding upon all persons as if the property thereby mortgaged had been, immediately upon execution of such mortgage, delivered to and the possession thereof retained by the mortgagee. Wisconsin Statutes, § 2314, as amended by Chap. 575, Laws 1913.

Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith after the expiration of two years from the filing of the same, or a copy thereof, unless within 30 days next proceeding the expiration of the two years the mortgagee, his agent or attorney shall make and annex to the instrument or copy on file in the office of the clerk mentioned in Section 2314 of the statutes and in the proper case to the copy on file in the office of the register of deeds mentioned in the same section, an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, upon which affidavit the clerk, and in a proper case the register of deeds shall indorse the time when the same was filed in his office. The register of deeds shall make the same entries of the filing of such affidavits, as are required by law of such clerk, and receive for such filing and entering the same compensation allowed by law to such clerks for like services. Wisconsin Statutes, § 2315.

The effect of such affidavit shall not continue beyond two years from the time when such mortgage would otherwise cease to be valid as against subsequent purchasers or mortgagees in good faith; but within thirty days next preceeding the time when such mortgage would otherwise cease to be valid as aforesaid a similar affidavit may be filed and annexed as provided in the preceeding section and with like effect. Wisconsin Statutes, § 2316.

1. No sale of any personal property taken by virtue of any chattel mortgage, lease or other instrument intended as security except by consent of the mortgagor, his legal representatives or assigns shall be made before the expiration of five days

from the time when the same was actually taken, nor shall any property during such time be removed from the county where it was situated when taken; and during such period such property shall be subject to redemption by payment of the mortgage debt, and the actual and necessary costs and expenses of taking and keeping it incurred at the time of making redemption.

2. The mortgagor, his wife, his assignee or assignees, may at any time after sale within five days redeem the property sold at the chattel mortgage sale at the actual amount at which same was sold, plus any expense necessary for the keeping of said property subsequent to the sale and said property shall not be removed from the town in which said sale took place before the right of redemption expires. Any person aggrieved by a violation of any provision of this section may recover of the person who violated same in addition to his actual damages $25.00 as liquidated damages. If any such property is sold at private sale without public notice or is sold within the period herein limited, without such consent the mortgage debt shall be deemed paid and the mortgage securing same be deemed cancelled. Nothing in this section shall be construed to limit the effect of Sec. 2319B. Wisconsin Statutes, § 2316A.

Whenever any property covered by a chattel mortgage, or instrument intended to have the effect of a chattel mortgage, shall be taken and sold under and by virtue of such mortgage pursuant to the power of sale contained therein, the owner of such mortgage or the person acting as the agent of such owner and conducting such sale, shall within ten days after the sale of any property covered by such mortgage make and file an affidavit setting forth the date of such sale, a description of the property sold, the sum claimed to be due on the indebtedness secured by such mortgage, the amount realized on such sale, a statement in detail of the expenses of such sale including the cost of taking and keeping the property pending the sale. A copy of the notice of sale if any shall be attached to said affidavit and be deemed a part thereof. Such affidavit

shall be filed in the office of the town or city or village clerk, where the mortgage under which such sale is had is filed, or if such mortgage be not so filed then in the office of the clerk of the town, city or village where said sale was held.

Any person violating the provisions of this section shall be liable to the person personally liable for the indebtedness in which case such person shall be entitled to recover in addition to his actual damages the sum of $25.00 liquidated damages. In case of the failure of the owner of any such mortgage or his agent conducting such sale to comply with the provisions of this section within the time herein limited, the debt secured by such mortgage shall be deemed fully satisfied and the mortgage cancelled. Wisconsin Statutes, § 2316C.

No public sale of any personal property taken by virtue of any chattel mortgage lease or other instrument intended as security except by consent of the mortgagor, his legal representatives or assigns, shall be made unless at least five days before such sale the mortgagee or his agent shall serve upon the owner of the equity of redemption in such property so taken, if he resides within the county, a written notice of such proposed sale, served either as a circuit court summons is served or served by mailing to him by registered mail. At any time prior to 48 hours in advance of such sale the mortgagor may serve upon the mortgagee or his agent in charge of the property notice that he elects to have such sale conducted by an auctioneer or other competent person, not interested in such sale or mortgaged property, who shall reside within the city or village where such property is located, to be named in such notice, and thereafter no other person shall conduct such sale, provided however, that if such auctioneer or other person so named shall not attend and conduct the sale any other person may sell the mortgaged property at the request of the owner of the mortgage, lease or other instrument intended as security. Such auctioneer or other person shall be compensated wholly by the mortgagor and shall have no claim against the mortgagee or against the proceeds of the

property sold, except that portion of the proceeds which belongs to the mortgagor. The auctioneer or other person named in such last mentioned notice shall conduct such sale but shall forthwith turn over to the mortgagee or his agent all the proceeds of such sale to be accounted for and disposed of as provided by law.

3. Any person aggrieved by a violation of any provision of this section may recover of the person who violated the same in addition to his actual damages $25.00 as liquidated damages. Wisconsin Statutes, § 2316M.

Where a chattel mortgage shall be paid and the other conditions thereof fully performed the mortgagee, his representative or assignee shall on demand give the mortgagor a certificate or certificates, cause the same to be filed in the clerk's office where the mortgage, and in the proper case in the register of deeds office, where the copy thereof to which the certificate or certificates relate, were filed and remove said mortgage and in the proper case the copies thereof from such office or offices, town, village or city clerks and registers of deeds shall receive and file such certificates and may charge 10 cents for so doing. Wisconsin Statutes, § 2317A.

WYOMING.

Legal Status of Conditional Sale Contracts.

Conditional sale contracts are provided for by statute law in this state. Revised Statutes, § 2837. Studebaker Bros. Co. v. Mau, 13 Wy. 358, 80 Pac. 151; Re-hearing with same decision, 14 Wy. 68, 82 Pac. 2.

How Executed.

They must be in writing signed by the vendee but do not need to be signed by the vendor, the acceptance of such a contract on the part of the vendor by acting upon it or shipping the goods being sufficient to make a binding contract as between the parties thereto. There is, however, no objection to the contract being formally signed and accepted by the vendor.

Acknowledgment or Proof.

Such a contract is valid as between the parties thereto without acknowledgment or proof or filing or recording, but in order to make it valid and to hold title as against any purchaser from or judgment creditor of the vendee in possession, filing must be made. It is not necessary that the instrument be acknowledged by the vendee or vendor, nor that it be signed or proven by a subscribing witness in order to be so filed. Revised Statutes, § 2837.

Recording or Filing.

There is no provisions in this state for recording conditional contracts of sale. There must, however, be a filing in

order to hold title as against any purchaser from or judgment creditor of vendee in possession. A true copy of the original may be used, and should be filed with the county clerk of the county where the property is located. There is no specified time within which such filing must be made, but in order to avoid all question the copy should be filed before the vendee gets possession of the property. There must be attached to such copy, when filed, an affidavit of the vendor, his agent or attorney, which shall state the names of said vendor and vendee, or lessor and lessee, and give a description of the property with the full and true interest of the vendor or lessor therein. Revised Statutes, § 2837. Grand Rapids Furniture Co. v. Grand Hotel etc. et al, 11 Wy. 128, 70 Pac. 838.

Recording Fee.

The fee for filing a conditional sale contract is 25 cents. Revised Statutes, § 2838.

Re-Recording or Renewal.

Conditional sale contracts must be renewed by filing within 30 days immediately preceding the end of one year from the date of sale or transfer, a copy of such contract, to which must be attached an affidavit similar to that employed when the original filing was made. A like renewal must be made at the end of each year until the contract is paid in full. Fee for refiling 25 cents. Revised Statutes, §§ 2837-38.

Discharge.

There is no provision for discharge of conditional contracts of sale after payment and no express penalty for failure to discharge. It is always advisable, however, upon request of the vendee or any other proper party to discharge such a contract from record after payment in full has been received.

Criminal Liability of Vendee.

None.

Loss. Who Must Bear.

No cases found.

Fixtures.

There has been no determination in this state as to the rights of a conditional vendor where property held under conditional contract of sale has been attached to a building.

Landlord's Lien.

There is no provision of law giving a landlord a lien for rent upon personal property located on his premises. He certainly could have none where a conditional contract of sale covering such property was properly filed before the property was placed thereon.

Notes.

No cases found.

Election of Remedies.

No cases found.

Repossession and Refund.

No cases found.

Railroad Equipment.

Conditional contracts of sale or leases with option to purchase covering railroad or street railway equipment or rolling stock, must be in writing, signed by all parties thereto, and in

order that same shall be valid as against subsequent judgment creditors or subsequent bona fide purchasers for value and without notice, the contract must be acknowledged by vendee, or lessee or be proven as deeds are required to be proven; after which the original must be filed for record with the secretary of state. Each locomotive, engine or car so sold, leased or hired, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner," or "lessor" or "bailor" as the case may be.

Upon payment in full a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record duly attested; or it may be made by a separate instrument acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid.

Fees for recording a contract $5.00, for recording a declaration of discharge $2.00, and for noting a discharge upon the margin of the record $1.00. Revised Statutes, §§ 2839-40.

Forms.

AFFIDAVIT WHERE VENDOR IS NOT A CORPORATION.

STATE OF WYOMING, }
COUNTY OF LARAMIE. } *ss.*:

Henry Martin, being duly sworn, says he is the lessor (1) and Richard Markham of Cheyenne, Wyoming, is the lessee of the safe described in copy of contract hereto attached, and the full and true interest of said lessor in said safe is that of owner.

HENRY MARTIN.

Subscribed and sworn to before me
this 12th day of July, 1917.

JAMES P. FITZGERALD,
Notary Public in and for ————.

1. Affidavit may be made by vendor's agent or attorney.

AFFIDAVIT WHERE VENDOR IS A CORPORATION.

STATE OF WYOMING,
COUNTY OF CONVERSE. } *ss.*:

John Richardson, being duly sworn, says he is the attorney (2) for Cary Safe ompany, a corporation; that said Cary Safe Company is the lessor, and Henry Harding of Douglas, Wyoming, the lessee of the safe described in copy of contract attached hereto, and the full and true interest of said lessor in said safe is that of owner.

JOHN RICHARDSON.

Subscribed and sworn to before me
this 12th day of July, 1917.

HERBERT J. MILBURN,
Notary Public in and for ————.

Officers Before Whom Acknowledgments May Be Taken.

Within the State. Any judge or clerk of a court of record; a United States court commissioner; county clerks; justices of the peace; notaries public.

Without the State but Within the United States. Commissioners of Wyoming; any clerk of a court of record; also any other officer authorized by law to take acknowledgments at the place where such acknowledgment is to be taken, but the official position, signature and regularity of such official must be certified by a clerk of a court of record, or a county clerk of the same place under seal.

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2. Affidavit may be made by any duly authorized officer, attorney or agent of the corporation.

PART V.

FORMS.

PRACTICAL SUGGESTIONS.

Form of Contract.

It is essential in almost every case that a conditional contract of sale be in writing. It is also desirable that such a contract should be a clear and concise statement of the agreement between the parties with no unnecessary verbiage. A lengthy contract not only requires more time for preparation, but in those states where the contract must be recorded, increases the cost of recording materially. Exceptional cases will arise, as for example, where specifications for construction work are included, in which the contract must of necessity be voluminous. Experience has shown, however, that five hundred words or even less are sufficient to cover any ordinary transaction.

Unilateral Contracts.

A unilateral or one-party contract is an offer or proposed contract which has been signed by one of the parties, but which has not been signed or formally accepted by the other party. This second party may then, at his option, either complete the contract by acceptance, or allow it to lapse by non-acceptance. Such contracts are common, as for instance, an order for goods which is signed by the vendee but is not ordinarily signed or formally accepted by the vendor.

In nearly all the states contracts of this kind are held to be valid without any formal written acceptance on the part of the vendor. Even in those states where, by statute law or by court decision, a different rule prevails, such an order signed by the vendee alone, is at once transformed by the mere indorsement of the word "Accepted" followed by the signature of the vendor into an ordinary two-party contract of a legal and binding nature. In most states, however, an unwritten acceptance of the order by the vendor, shown by his acting upon it, is held to be sufficient to complete the contract, and it is then binding upon both parties with the same force and effect as if it had been signed by both.

When goods are sold on conditional sale the unilateral contract is commonly employed, usually in the form of an offer, or order, signed by the prospective vendee and directed to the vendor. This form of contract, or order, is desirable because of the fact that it is in no way binding upon the prospective vendor until accepted by him.

The advantage of such a condition is obvious. Only in rare instances can it be considered safe to clothe the salesman with authority to actually bind his principal, when credit is to be given the vendee. Such authority is better vested, so far as possible, in the credit department of the vendor where orders may be acted upon with calm and intelligent consideration. The unilateral contract permits this to be done. If the investigations of the credit department prove the sale to be desirable, the contract may then be accepted and made binding on all parties. If, however, investigation shows that the proposed sale is not safe or is not desirable, the contract may be rejected without thereby involving the vendor in a liability for damages.

In any such case, if an order is approved, its acceptance may be evidenced either by a writing sent to the vendee, by a formal acceptance endorsed on the order, or by action thereon, as for instance, ordering material required for the manufacture of the goods, or actually starting work upon their construction or manufacture, or if they are ready for delivery, the actual

shipment of the goods. It is however, always both prudent and courteous to acknowledge receipt of the order at the earliest possible moment, stating either the fact of its acceptance or rejection.

The one objection to the unilateral or order contract as usually employed in conditional sales, is the fact that it is not immediately binding upon the vendee; but may be cancelled or countermanded by him at any time up to its actual acceptance by the vendor. Occasionally orders are so cancelled and this would not be possible if the salesman were authorized to accept the order and did so accept it at the time it was given. On the other hand, as already intimated, the salesman is not usually competent to judge of the credit conditions under which an order is given, or to conduct an adequate investigation of the vendee's standing, and in practice the losses incurred by reason of cancellations, are far more than offset through the losses avoided by the rejection of orders which are shown under investigation to be doubtful or worthless.

Acknowledgment or Proof.

An order having been accepted, it becomes necessary in many states to have this completed contract, or a copy or memorandum thereof, filed or recorded with the proper official. Usually before such a contract will be filed or recorded, it must be acknowledged or proven in the manner provided by statute. In some few states this proof must be in the form of an acknowledgment by the vendee. Usually, however, if the contract is signed by the vendee it may be proven by the oath of a subscribing witness, and will then be received for filing or recording without the vendee's acknowledgment. As it is almost always difficult to induce the vendee to acknowledge a conditional contract of sale, this proof by a subscribing witness is the preferable alternative and is, wherever allowed, the usual method of proof. Here comes in another advantage to the vendor in the use of the usual signed order or unilateral contract.

The salesman who takes such an order does not execute the contract on behalf of the vendor and may therefore attach his name to the contract as a subscribing witness. If he so acts he may at any time thereafter prove the contract by his oath, thereby completing the necessary formalities and enabling the filing or recording of the contract without recourse to, and even without the knowledge of the vendee.

Time of Filing or Recording.

In a few states (indicated in Part IV of the present volume) a contract of conditional sale should be filed or recorded immediately after the order has been accepted and before delivery of the goods. Outside of these few states, however, the contract need not ordinarily be filed or recorded until shipment has been made, and in practice the shipment itself is usually relied upon to indicate the date when the contract must be sent for filing or recording.

Procedure for Filing or Recording.

The records, or a memorandum of the shipments made each day, if turned over to the person having charge of the conditional contracts of sale, will serve as a convenient means of informing him as to the contracts which must then be filed or recorded.

If the original contract is sent for filing or recording, a sworn copy should replace it in the files of the vendor, and the date when the original was sent, and where and to whom should be endorsed upon this copy. If a copy or a memorandum is sent, a like endorsement should be made upon or be attached to the original contract, which is kept in the files of the vendor.

Where order books or other similar records are kept, a notation to the same effect made on these books against the particular order, will be found a convenience. A list of the contracts sent for filing or recording should also be kept and should

show the name of the officer to whom sent and the place and date of sending.

A form letter to accompany contracts when sent to the filing or recording officer, may easily be arranged so as to be suitable for all cases, and when required is prepared for use by simply filling in a few blanks. The letter should, as a matter of course, request the officer addressed to advise the sender of the receipt of the contract and the date on which it is filed or recorded in his office. A form letter of this kind is given on a later page of the present volume.

When notice is received that a contract has been filed or recorded, this information should be noted against the particular contract on the list of contracts sent for filing or recording. If no reply to the form letter is received within a reasonable time, say ten or fifteen days, the fact can easily be ascertained by reference to this same list. The officer to whom the contract was sent may then be written again, and the matter be followed up until brought to a satisfactory conclusion.

Proper Filing or Recording Officials.

The proper filing or recording official for any particular state may be determined by reference to Part IV of the present volume. The county wherein the vendee resides, which is usually the place of filing, may be determined by reference to Dun's or Bradstreet's publication. Or, if the county in which the property is located after delivery is the place of filing, the Dun or Bradstreet publication may again be conveniently used, as the town to which shipment was made can easily be found therein and in connection therewith the county in which such town is located.

If the filing or recording is to be made by an officer of the county or a clerk of a county court, the letter may be directed to such official at the county seat. When it must be made in a city clerk's office, the letter may be directed to such official in his proper city. The greatest difficulty is encountered where

the filing or recording official is a village, town or township clerk. These officials are changed frequently, their address is not always certain, and no publication known to the author gives a list of them. It will be found, however, that a letter directed to the village or town clerk at the place where the particular instrument must be filed or recorded, will almost invariably reach the proper official.

Fees.

Postage stamps may be sent in payment of filing or recording fees when these latter are not in excess of twenty-five cents. Larger amounts if remitted in this form are, however, liable to be refused and are better sent in currency by registered mail, or perhaps more safely, by means of express or post office orders or drafts. Checks will sometimes be received without question by the filing or recording officials, but not infrequently they are looked upon with disfavor. Also they are usually subject to collection charges, which, if not included in the amount of the check, give rise to dissatisfaction, a request for remittance of these charges, or a refusal of the check itself. Under these conditions checks are not safely employed unless it is known that they will be accepted by the filing or recording officials, or unless the delay incident to their return or to a correspondence, in regard to them is not objectionable.

CONDITIONAL CONTRACTS.

The forms of conditional contracts which follow have been found effective and satisfactory in actual use. They may in many cases be used in the shape here presented. In other cases they will serve as suggestions for the drafting of instruments suited to the particular conditions under which they are to be employed.

It will be recognized that the main purpose of a conditional sale contract is to protect the vendor. To do this its terms must of necessity be strongly in his favor, but the protective clauses should not occupy too prominent a place in the instrument or they may strike the vendee as harsh. For this reason the wording and arrangement in some of the following forms intentionally departs from the usual contract construction, and especially is this true in the unilateral or one party contracts.

When conditional contracts are employed they are ordinarily used in such numbers as to necessitate a printed form. In the contract forms which follow the variable matter has been reduced to a minimum so that the form when printed will have but a small number of blanks to be filled in at the time the instrument is used. The matter is merely one of convenience but will be appreciated by the salesman who must prepare the form for signature.

CONDITIONAL CONTRACT.

Ithaca, N. Y., July 12, 1917.

To Cayuga Manufacturing Co.,
Auburn, New York.

Please send as soon as convenient one No. 25 "FIRE-PROOF" SAFE, approximate size inside, 25 inches high, 15

inches wide and 11 inches deep, as per your illustrated catalogue, or plan on back hereof if any. Necessary alterations allowed. Ship via Lehigh R. R. from Auburn, New York, and rent same to undersigned on the following terms:

Safe to be delivered f. o. b. cars at Auburn, New York, and the rental thereof to be $85.00 payable $25.00 in cash on arrival of safe and the balance in four equal installments at two, four, six and eight months from date of invoice, these deferred payments to be evidenced by rental notes, bearing interest at the rate of 6% from invoice date, which shall also be the date of said notes.

Said rental notes are to be sent you as soon as invoice for sale is received and if they have not been forwarded at the expiration of twenty-five days from date of invoice, the entire rental of said safe as above set forth shall be come due and payable, and I agree to accept and pay your draft for the said amount on presentation.

When the full amount of $85.00 with interest as provided is paid, you are to give me a bill of sale for said safe, and same is to become my property, but is it agreed that the title to said safe shall not pass until said payments have been made in full, but shall remain with you, and on default of payment of said rent, or of any part thereof, you or your agent may take possession of and remove said safe without legal process and all sums then paid shall be retained by you as rental for said safe while it was in my possession, and all exemptions and all claims for damages are hereby waived.

I agree to notify you of any seizure of said safe or of any bankruptcy or settlement with creditors on my part, and in case the said safe shall be seized it is agreed that all installments of rent previously paid shall be forfeited.

Nothing but shipment, or delivery or actual acceptance in writing shall constitute your acceptance of this contract and same shall not be countermanded, cancelled or annulled by me.

I also hereby expressly state and agree that the foregoing embodies all claims made between us in any way in regard to the said safe and that all claims of verbal or other agreements of any nature not embodied in this contract are hereby waived.

The receipt of a duplicate of this present contract is hereby acknowledged.

Truly yours,
Morris M. Wilson.

$85.00.
Agents Not Authorized to Make Collections.

CONDITIONAL CONTRACT.

Columbus, Ohio, July 12, 1917.

Howard Walton Safe Co.,
New York City, New York.

Please ship, F. O. B. New York City, to Edward M. Sheldon, Columbus, Ohio, by freight as soon as possible, one No. 5 iron safe, specifications as per your catalogue.

On fulfillment of the above, the undersigned agrees to pay you the sum of Sixty-five Dollars ($65.00) as follows: Five Dollars ($5.00) cash on arrival; balance by monthly payments of Five Dollars ($5.00) each from date of invoice.

Upon delivery of safe I agree to pay sight draft for Five Dollars ($5.00) and to execute and deliver to you twelve notes, for Five Dollars ($5.00) each, to cover the balance, said notes to bear date of invoice and one to be payable each month thereafter until all are paid.

Should there be any failure to pay such draft on presentation or to execute and pay any note or notes for deferred payments as provided herein, it is agreed that the full amount covered by this contract shall at once become due and payable.

It is especially agreed that this order shall not be countermanded and it is further agreed that the title to said safe shall not pass until the purchase price thereof or any judgment for the same is paid in full but that said safe shall remain your property until that time.

In default of any payment you or your agents may take possession of and remove said safe without legal process, and in such case all payments heretofore made by me under this contract shall be deemed and considered as having been made for the use of said safe during the time the same remained in my possession and shall be retained and kept by your said company as such payment.

The signing and delivery of said promissory notes shall not be deemed nor considered a payment nor a waiver of any term, provision or condition of this contract.

It is agreed that the purchaser of said safe shall not remove same from the premises at 235 Congress Street, Columbus, Ohio, without first having obtained the written consent of the said Howard Walton Safe Company, nor use said safe so as to injure it or impair its use, other than may result from ordinary wear.

This safe is not placed on trial or approval, and no agent is authorized to make or bind the said Howard Walton Safe Company by any agreement, statement or representation of any kind other than contained in this contract. This contract covers all agreements between the parties hereto and receipt of duplicate is hereby acknowledged.

Edward M. Sheldon.

Wynn J. Condon,
Witness.

CONDITIONAL CONTRACT.

Buffalo, New York, July 12, 1917.

Howard Walton Safe Company,
New York City, New York.

Please ship to undersigned at Buffalo, New York, as soon as possible, one iron safe, approximate size inside, 35 inches high, 25 inches wide and 20 inches deep.

In consideration of same the undersigned agrees to pay you $150.00, being the price of said safe F. O. B. Buffalo, New York, on the following terms: $25.00 cash on signing this order; $25.00 cash on delivery of safe and $100.00 in notes, being ten of $10.00 each, to be executed and delivered to you by the undersigned when the safe arrives, said notes to be payable one each month until all are paid. You are authorized to date said notes from date of invoice, as you may elect, either before or after the execution thereof. You are to allow 5% discount for cash settlement if same is made within ten days after arrival of safe.

In case of failure to pay draft for cash payment when presented, or to execute and deliver such notes covering deferred payments, it is agreed that the full amount of the purchase price shall become forthwith due and payable. Should default be made in the payment of any installment it is agreed that all the remaining installments shall become forthwith due and payable. In default of any payment, you or your agent may take possession of and remove said safe without legal process and in such case all payments theretofore made by the undersigned, shall be considered as having been made for the use of such safe during the time same remained in the possession of the undersigned and shall be retained by you as payment therefor, and for myself, my successors or assigns I hereby expressly waive the benefit of all provisions of the Lien Laws and Exemption Laws and all rights or causes of action given thereby. In the

event of a refusal to accept said safe when tendered, it is agreed that the sum as above mentioned, less any actual cash payments, shall at once become due and payable. All taxes and assessments levied on said property are to be paid by the undersigned. Any injury to or destruction of the property shall in no manner effect the undersigned's liability for payment on this contract or the notes given thereunder.

It is agreed that the title to said safe shall not pass until purchase price or any judgment for same is paid in full but that said safe shall remain your property until that time. The undersigned expressly agrees not to countermand or attempt to annul this order, which it is expressly understood covers all agreements of every name and nature between the parties.

Douglass H. Mackenzie.

George Whalen,
Witness.

CONDITIONAL CONTRACT.

I, Wallace McGill of Buffalo, New York, have this day received of Willis & Brown, also of Buffalo, New York, the following described property: One Willis & Brown Sewing Machine, No. 17524, in drop oak cabinet, under an agreement for the conditional sale thereof, which said agreement and every condition and provision thereof is set forth below and is as follows:

The value of the aforesaid property is fixed at $50.00.

I agree to pay Willis & Brown the sum of $1.00 cash on signing this contract, and in consideration of having the possession and use of said property I further agree to pay Willis & Brown at their place of business in Buffalo, New York, the further sum of $1.00 weekly, said payments to be made on Saturday of each week until I have paid the full sum of $50.00.

When I shall have paid the last mentioned sum in full and any other sums due by reason of my default as hereinafter provided, I am to have title and ownership to said property; Willis & Brown to have full and absolute title and ownership to the above described property until all the payments have been made.

I expressly agree not to remove said property or any part thereof from the premises I now occupy without first obtaining the written consent of said Willis & Brown and to use such property at all times while this contract is in force in a careful and prudent manner.

I further expressly agree that when I fail to make any of the payments herein provided for at the time when the same becomes due or if I fail to keep and perform faithfully each and every one of the terms and conditions of this agreement, Willis & Brown may without notice to me, enter my premises where such property is located and take immediate and full possession thereof and upon said Willis & Brown obtaining said above described property in any manner and holding same for 30 days, any right that I may or might have in said property or to the possession thereof or to payments made thereon shall cease absolutely without a subsequent public sale of said property and without notice of sale or otherwise to me, hereby expressly waiving any action or right of action of any kind whatsoever, which I may have against Willis & Brown growing out of such removal or attempted removal according to the aforesaid agreement, or arising by reason of such repossession and retention of said goods by said Willis & Brown without subsequent public sale thereof and notice to me.

I hereby agree to pay any and all charges and expenses including a reasonable attorney fee incurred in taking possession of said property or in collecting said bill in case of my default.

I hereby expressly and solemnly state I am 21 years and upwards of age.

In Witness Whereof, on this 12th day of July, 1917, I have hereunto subscribed my name and affixed my seal to this agreement and a duplicate hereof, one of which was delivered and retained by me.

Wallace McGill,
Willis & Brown.

William H. Verbeck,
Witness.

CONDITIONAL CONTRACT AND NOTE.

$75.00. Charleston, S. C., July 12, 1917.

I, Seymour W. Doran, promise to pay to Cary Safe Company or order, Seventy-five Dollars, at their office in Buffalo, New York, in five installments, namely: Fifteen Dollars on the 12th day of August, 1917; Fifteen Dollars on the 12th day of October, 1917; Fifteen Dollars on the 12th day of December, 1917; Fifteen Dollars on the 12th day of February, 1918; Fifteen Dollars on the 12th day of April, 1918, being the price of one iron safe, and I agree that on default of payment of any of said instalments when due, the full balance of this note remaining unpaid shall thereupon mature and become immediately due and collectable, without further notice or demand. This note to bear interest from date at the rate of 6% per annum. But said sale is conditional, and title to said property remains in said Cary Safe Company until this note and costs are fully paid. And in default of payment of said note, or any part thereof, said property is to be returned to said Cary Safe Company, on demand. If said property or any part thereof be lost, damaged or destroyed before payment in full of the purchase money, the vendee or vendees herein shall in no event be entitled to a rescision of the contract or abatement in the price.

If this note be placed in the hands of an attorney for collection, the subscriber hereby agrees and promises to pay 10 per cent. attorney's fees on principal and interest due on same.

Each of us, whether principal, security, guarantor, indorser or other party hereto, hereby severally waives and renounces each for himself and family, any and all homestead or exemption rights, and any and all exemption of daily, weekly, monthly or yearly wages, or salary of each of us, from the process of garnishment, either of us, or the family of either of us, may have under or by virtue of the constitution or laws of this state, or of any state of the United States as against this debt or any renewal thereof, and each further waives demand, protest and notice of demand, protest and non-payment. Given under the hand and seal of each party.

{ CORPORATE SEAL. }

Seymour W. Doran. (Seal.)
Cary Safe Company,
By Harvey G. Bush,
Asst. Treas.

Signed, sealed and delivered
in presence of Henry Smith.

CONDITIONAL CONTRACT IN THE FORM OF A NOTE.

$100.00. Elmira, N. Y., July 12, 1917.

For value received I, the subscriber, of Elmira, New York, promise to pay to the order of Henry Marsden, of Buffalo, New York, $100.00 at his office in said city, as follows: Five Dollars cash on signing this order; $5.00 cash on delivery of the property, and the balance, two dollars per week with legal interest on each of said sums.

The consideration for the payment of the above named amount is the agreement by said Henry Marsden to sell and deliver to the subscriber at Elmira, New York, one iron safe, the

use of which is let to the subscriber and this agreement is made upon the following conditions, namely:

The said safe is and shall remain the property of said Henry Marsden until each and every one of said amounts and interest thereon, and any judgment rendered thereon shall be paid in full and in case the subscriber makes default in payment of said amounts or any of them or interest thereon at the time and place above specified, or shall sell, assign or remove, or attempt to encumber, dispose of or remove said safe from the place above mentioned without the written consent of said Henry Marsden, his agents or assigns; or if said Marsden, his agents or assigns shall feel insecure or unsafe, the subscriber shall on demand deliver the property in as good condition as when received, reasonable use or wear excepted, or said Marsden or his agents or assigns shall have the right without notice or demand to take immediate possession of said property and for that purpose may pursue the same wherever it may be found, and may enter my premises with or without force or process of law, or wherever the said safe may be, or be supposed to be, and search for same and if found to take possession thereof and in case said Marsden, his agents or assigns shall retake possession of said property, all moneys paid on the purchase price thereof shall belong to said Marsden or his assigns as liquidated damages for nonfulfillment of this contract by the subscriber and for loss in value of said property and for the use and rental thereof while remaining in possession of the subscriber; or should default be made in making any of the said payments as above specified, and should the same remain in arrears and unpaid for the period of 10 days, or should any condition, stipulation or agreement herein contained be violated or not kept by me, then in such case the whole sum remaining unpaid on this agreement shall at the option of said Marsden or his assigns without notice become immediately due and payable and said Marsden or his assigns may at their option whether they have or have not retaken possession of said property, enforce the payment and collection of the balance remaining unpaid on this agreement and interest thereon.

In case of the payment of each and every said amount and interest thereon or payment of judgment obtained thereon, the full and absolute title of said property shall pass and vest in the subscriber hereto, it being, however, expressly understood that title shall not pass to the subscriber until any and all judgments obtained hereon are paid and satisfied in full. This agreement shall not be binding on said Marsden until accepted and approved by him. The contract has been signed in duplicate and a copy thereof delivered to the subscriber, the receipt of which is hereby acknowledged.

Samuel Wellman.

Harrison McCall,
Witness.

Accepted,
Henry Marsden.

For value received I hereby guarantee the payment of the above contract in all respects when due and I hereby make same a charge on my separate estate.

Mary H. Wellman.

BAILMENT CONTRACTS.

In these contracts the form of a lease is preserved, the stipulation being that the property is on rental. In the first form the instrument is a lease pure and simple without provision for the transfer of title at the termination of the rental period. In the other bailment contracts given under the present heading the provision is included that upon full payment of all the rentals provided for by the contract, the title to the property is transferred to the lessee.

BAILMENT CONTRACT.

This certifies that I, John Mackay, now residing at 25 Main St., in the city of Newark, New Jersey, have rented and received from the Cary Safe Company, of Buffalo, New York, one iron safe, all in good order and for the use of which I agree to pay rent as follows: $10.00 cash on delivery of this agreement, the receipt whereof is hereby acknowledged and accepted as payment of the first month's rent only, and then at the rate of $5.00 per month payable in advance on the first day of each month thereafter for ten months at the office of the Cary Safe Company in Buffalo, New York, without notice or demand. But if default shall be made in any of said payments or if I shall sell, or offer to sell, or remove, or attempt to remove said safe from my aforesaid residence without written consent of Cary Safe Company, then in that case, or if otherwise at the expiration of the time for which said safe is rented, I will return and deliver the same to said company in good order save

reasonable wear, and said company or its agents may assume actual possession thereof and I hereby authorize and empower the said company or its agents to enter the premises wherever said safe may be and take and carry same away, hereby waiving any action for trespass or damages therefor and disclaiming any right of resistance thereto and I also waive all rights of homestead and other exemptions of said state against this obligation.

Witness my hand this 12th day of July, 1917.

John Mackay.

Attest,
Isaac Hummell.

BAILMENT CONTRACT.

This Certifies, that Henry D. Fisher, the undersigned, now residing at 42 Lawrence Place, Buffalo, New York, has received of the S. O. Barnum Co., one motor bicycle, returnable on demand all in good order and repair and valued at One Hundred and Fifty Dollars ($150.00), which the undersigned agrees to use with care and keep in like order and for the use of which the undersigned agrees to pay as follows:

On delivery of said property, Twenty Dollars ($20.00), which shall be accepted as payment for rent until January 1, 1917, and then at the rate of Ten Dollars ($10.00) per month payable in advance on the first day of each and every month at the office of S. O. Barnum Co., Buffalo, New York, without notice or demand.

If default be made in any of the payments or in case the undersigned shall sell, offer to sell, remove or attempt to remove said property from under his custody or control without the consent in writing of the said S. O. Barnum Co., then in that case this lease shall cease and terminate and said S. O.

Barnum Co., or its agent, is hereby authorized to resume actual possession of said property wherever same may be and to take and carry the same away and the undersigned hereby waives any action for trespass or damages therefor.

It is further agreed that the undersigned may at any time within said rental period purchase said property by paying the above named valuation therefor and in that case the rent theretofore paid shall be deducted from such purchase price. If any installment of rent is not paid when due or said property is not returned upon demand, undersigned agrees to pay an attorney's fee of Ten Dollars ($10.00) in case this lease is placed in the hands of an attorney for collection of said rent or to recover possession of said property.

Henry D. Fisher.

Dated at Buffalo, New York, July 12, 1917.
Attest, Lawrence Halliday.

In Pennsylvania a conditional contract of sale, except for railroad equipment, and where the property is attached or to be attached to real estate, will not be upheld by the courts where the rights of third parties have intervened. For this reason a bailment or lease form should be used. The following form has proved effective and satisfactory and may be safely used.

BAILMENT CONTRACT FOR PENNSYLVANIA.

Bradford, Pa., July 12th, 1917.

H. K. Mfg. Co.,
Buffalo, N. Y.

Please send, as soon as convenient, one No. 5 "FIRE-PROOF" SAFE, approximate size inside, 17 inches high, 12 inches wide, 11 inches deep, as per your illustrated catalogue, or plan on back hereof, if any. Necessary alterations allowed.

Ship via Penn. R. R., F. O. B. cars at Buffalo, New York, and rent same to undersigned.

This lease shall be for the term of ten (10) months from date, with rent payable as follows: Fifteen Dollars ($15.00) on delivery of safe as rent for first two months; balance Ten Dollars ($10.00) per month thereafter on the day of the month corresponding to the date of this lease.

It is agreed that said safe shall not be sublet to any other person, without your consent in writing, and shall be surrendered to you at the expiration of this lease, in as good condition as when taken, ordinary wear excepted; provided, however, if said rent shall be promptly and fully paid, whenever such payments shall amount to the sum stated below, the undersigned may elect to become owner of said safe.

If any portion of said rent shall not be paid as agreed, or if any of the provisions of this lease be violated, all rent shall become due and payable forthwith, and you or your agent may take possession of and remove said safe, without legal process. All rent paid shall be retained by you as hire for said safe. All exemptions and all claims for damages are hereby waived. Nothing but shipment or delivery or actual acceptance in writing, shall constitute your acceptance of this lease, and it is agreed same shall not be cancelled or annulled by the undersigned. Receipt of a duplicate hereof is hereby acknowledged. The foregoing embodies all agreements between the parties; it being understood that all claims of verbal or other agreements are hereby waived. It is understood that agents are not authorized to collect.

Truly yours,
George L. Hodgson.

Amount $75.00.

Accepted,
H. K. Mfg. Co.,
By Henry Smith,
President.

Where a more formal contract is desired for use in Pennsylvania the following may be employed. Blanks will, of course, be left in the form when printed for variable matter such as name of lessee, terms of payment, etc.

BAILMENT CONTRACT.

Indenture made this 12th day of July, 1917, between the Cary Safe Company of Buffalo, New York, hereinafter termed the lessor, and Hermann Gillette of Lancaster, Pennsylvania, hereinafter called the lessee.

The said lessor doth hereby lease unto the said lessee one No. 5 "FIRE-PROOF" SAFE of the following approximate inside dimensions: Height, 17 inches; width, 12 inches; depth, 11 inches, the said lease to be for the term of ten months from the date hereof and rental for said safe to be paid by the said lessee as follows: On delivery of safe, Fifteen Dollars ($15.00) which shall be the rental of said safe for the first two months of the present lease, and Ten Dollars ($10.00) on the 21st day of each and every month thereafter until the expiration of the term for which said safe is leased; delivery of said safe to be made F. O. B. on cars at Buffalo, New York.

The said lessee hereby agrees to surrender the said safe at the expiration of this lease in as good condition as when received by him, ordinary wear excepted, provided, however, that if the rentals as herein specified and set forth shall be fully and promptly paid, the said lessee may, whenever the said rental payments aggregate the sum of seventy-five Dollars ($75.00), elect to become owner of said safe and if said lessee so elects and so notifies the said lessor, this present lease shall then cease and terminate and the said safe shall without further payment under this present indenture become and be the property of the said lessee hereunder.

The said lessee further agrees that said safe shall not be sublet to any other person or persons during the life of this lease without the written consent of the lessor. Also, if any portion of said rent shall not be paid at the times and in the amounts hereinbefore set forth, or if any of the provisions of this lease be violated, the rental of said safe for the full period of this lease shall become due and payable forthwith, and the said lessor through its officers or agents may take possession of and remove said safe without legal process and the said lessee hereby waives all exemptions and all claims for damages and agrees that all rent paid by him up to the time of the repossession of said safe by the lessor shall be retained by said lessor as hire and payment for the lessee's use of said safe.

It is further agreed that the present lease is not effective as to the said lessor until formally executed by the said lessor, or the agent of said lessor, and the said lease shall not be subject to cancellation or annullment by the said lessee.

It is further expressly understood and agreed that all claims of any verbal or other agreements respecting the said safe shall be and hereby are waived, and that all agreements between the parties are embodied in the present indenture of which the said lessee hereby acknowledges the receipt of a duplicate.

In Witness Whereof, the parties hereunto have respectively affixed their legal signatures and seals on the day and year first above mentioned.

Cary Safe Company,

By Harvey G. Bush,
Asst. Treasurer.

Hermann Gillette. [L. S.]

{ CORPORATE } { SEAL. }

Agents are Not Authorized to Collect Rentals.

RELEASES.

In a few states the laws require that a contract of conditional sale shall be released or discharged immediately upon payment, whether requested by the vendee or not, and assess a penalty for failure so to do. In these states the law will, of course, be followed to the letter but elsewhere it seems hardly necessary to send a formal release of the contract when payment is made unless such release is requested by the vendee or some other proper party.

If a release is requested it will usually be found sufficient to send it direct to the party, requesting him to place the same on file, or cause it to be recorded as necessary. The party receiving the release or discharge will usually do this, thus saving to the vendor the cost and trouble involved in the filing or recording.

Where vendor is a corporation located in New York and the contract of conditional sale has been recorded, though in another state, the following form of release may be used. If the vendor resides in another state the acknowledgment should comply with the laws of that state. Where the release is to be filed in New York state it seems necessary that it should be acknowledged.

RELEASE WHEN VENDOR IS A CORPORATION.

Cary Safe Company, a corporation duly organized under the laws of the state of New York, and having its principal place of business at Buffalo, New York, does hereby certify

that the provisions of a certain conditional contract for the leasing of an iron safe heretofore given by Henry Smith of Lexington, Kentucky, to said Cary Safe Company, have been satisfied and the amount due thereunder paid in full, and the county clerk of Fayette county, Kentucky, is hereby directed to cancel and discharge from record the said contract recorded on or about January 1, 1917.

Dated at Buffalo, N. Y.
July 12, 1917.

Cary Safe Company,

By Harvey G. Bush,
Asst. Treas.

{ SEAL. }
{ CORPORATE }

STATE OF NEW YORK, }
COUNTY OF ERIE. } *ss.*:

On this 23rd day of July, in the year 1917, before me personally came Harvey G. Bush, to me known, who being by me duly sworn, deposes and says that he is the Assistant Treasurer of the Cary Safe Company, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to the said instrument was such corporate seal and that it was affixed by order of the Board of Directors of said corporation, and that he signed the corporate name thereto by like order, as Assistant Treasurer of said corporation.

Harvey G. Bush.

Sworn to before me this 23rd day
of July, 1917.

Henry W. Carr,
Notary Public in and
for Erie Co., N. Y.

{ NOTARIAL }
{ SEAL. }

A form of individual release when the contract of conditional sale has been filed, is as follows:

RELEASE OF FILED INSTRUMENT.

I, Hiram H. Bacon of Buffalo, New York, do hereby certify that the provisions of a certain conditional contract for the sale of an iron safe heretofore given by Oscar A. Simon of Topeka, Kansas, to me, have been satisfied and the amount due thereunder paid in full, and the register of deeds for Shawnee county, Kansas, is hereby directed to cancel and discharge from record the said contract filed in his office on or about January 1, 1917.

Dated at Buffalo, N. Y.,
April 23, 1917. Hiram H. Bacon.

If the contract of conditional sale has been recorded, the release must be ackonweldged and its form varied to meet the conditions, as in the following:

RELEASE OF RECORDED INSTRUMENT.

I, David W. Van Hoesen of Cortland, New York, do hereby certify that the provisions of a certain conditional contract for the sale of an iron safe heretofore given by Orris U. Kellogg of Davenport, Iowa, to me, have been satisfied and the amount due thereunder paid in full, and the county recorder of Scott county, Iowa, is hereby directed to cancel and discharge from record the said contract filed in his office on or about January 4, 1917.

David W. Van Hoesen.

Dated at Cortland, N. Y.,
April 23, 1917.

STATE OF NEW YORK, }
COUNTY OF CORTLAND. } *ss.*:

On this 23rd day of April, 1917, before me, the subscriber, personally came David W. Van Hoesen of Cortland, New York, to me known and known to me to be the person described in and who executed the foregoing instrument and duly acknowledged that he executed the same.

Edwin L. Duffy,
Notary Public in and
for Cortland Co., N. Y.

{ NOTARIAL SEAL. }

Where vendor is a corporation and the contract has been filed, the following form of release may be used.

RELEASE OF FILED INSTRUMENT.

Cary Safe Company, a corporation duly organized under the laws of the State of New York and having its principal place of business at Buffalo, New York, does hereby certify that the provisions of a certain conditional contract for the sale of an iron safe heretofore given by William L. Fox of Pierre, South Dakota, to said Cary Safe Company, have been satisfied and the amount due thereunder paid in full, and the recorder of deeds for Hughes county, South Dakota, is hereby directed to cancel and discharge from record the said contract filed in his office on or about December 20, 1916.

In Witness Whereof, the said Cary Safe Company has caused this instrument to be executed this 12th day of July, 1917.

Cary Safe Company,
By Harvey G. Bush,
Asst. Treas.

Where a contract has been filed but not recorded it is not ordinarily necessary to affix the corporate seal to the release.

MISCELLANEOUS FORMS.

LETTER TO RECORDING OR FILING OFFICER.

Village or Town Clerk, City of Old Town, County of Penobscot, State of Maine:

Dear Sir: Enclosed please find contract of J. F. Curley, which we desire placed on file in your office, and we hand you forty cents in stamps as a fee for such services. We also enclose a stamped envelope, and would ask you to kindly advise us, at once, date above was placed on file, and greatly oblige,

Yours truly,

Cary Safe Company,
Per S. W. D.

Please reply on this sheet.

OATH TO COPY OF CONTRACT.

STATE OF NEW YORK, }
COUNTY OF ERIE. } *ss.*:

Jacob Truxas, being duly sworn, says the within contract is a true copy of the original.

Jacob Truxas.

Subscribed and sworn to before me this 7th day of May, 1917.

Henry W. Carr,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

OATH TO COPY OF CONTRACT.

I hereby certify within to be a true copy of original contract.

Julia S.Willis.

Sworn and subscribed before me this 7th day of May, 1917.

Henry W. Carr,
Notary Public in and for ————.

{ NOTARIAL SEAL. }

APPENDIX.

BANKRUPTCY.

It is quite important that conditional sale contracts should be properly handled in bankruptcy. Where such a contract has been secured and the vendee becomes bankrupt, it is very seldom essential for the vendor to spend any money in placing his claim properly before the bankruptcy court. This is especially true where the contract has been properly perfected, and filed or recorded, as required by law in the several states. A claim arising under conditional contract of sale is often classed as secured, but under a strict interpretation of the bankruptcy law in its definition of a secured creditor, such a contract does not admit the vendor or his assignee to that class. "Secured creditors shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this act." Bankruptcy Law, 1908, Chap. 1, § 1, Sub-Division 23.

In the majority of states the articles delivered to a vendee under conditional contract of sale do not become his property until he shall have performed the conditions in full. This usually means payment in full, and for that reason the trustee of his estate who secures possession of such property has in fact the property of the creditor, and not the property of the debtor bankrupt; but he undoubtedly succeeds to the rights of the vendee and may perform under the contract just as the vendee might have performed, thus bringing the property in question into the bankrupt's estate for distribution.

Where a secured claim is filed the value of the security must be determined, and this usually means the property

against which it is a lien must be sold and the proceeds credited on the debt. The creditor may then prove his claim for the balance and receive whatever dividends may be paid. A creditor under conditional contract of sale may always prove his claim unsecured, if for any reason he believes better results will be obtained.

The bankruptcy law has now been amended, in effect June 25th, 1910, so that a trustee is vested with much greater powers concerning this class of property than formerly. "Such trustee as to all property in the custody and coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied."

Great care should therefore be exercised by all vendors under conditional sale contracts, in the future, to have same properly filed or recorded, as provided by the state laws; for otherwise the trustee in bankruptcy may rightfully claim the same interest in property delivered under such a contract, as could be claimed by an attachment or execution creditor who had levied upon it in the hands of the bankrupt under like contions. In re: Priegle Paint Co., 175 Fed. 586; In re: Norton, 181 Fed. 901; Liquid Carbonic Co. v. Quick, 182 Fed. 603; Modifies in re: Rinker, 174 Fed. 490; In re: Ferguson Contracting Co., Ex parte Vulcan Iron Works, 183 Fed. 880; Guarantee Title & Trust Co. v. First National Bank, 185 Fed. 373; In re: Gartman, 186 Fed. 349; In re: Gehris-Herbine Co., 188 Fed. 502; In re: Basemore, 189 Fed. 236; In re: Williamsburg Knitting Mill, 190 Fed. 871; See In re: Lansman, 183 Fed. 647; Rock Island Plow Co. v. Reardon, 222 U. S. 354; Ludvigh v. Am. Woolen Co., 231 U. S. 522; Fellows v. Continental Savings Bank, 235 U. S. 300; Bailey v. Baker Ice Machine Co., 239 U. S. 268.

It is advisable in most instances, therefore, to present your claim in such a manner that it must be paid in full or the property in question be delivered to you. From long experience in handling this class of cases, the author of Haring's "Conditional Sales" has been most successful in securing such results by presenting to the referee in bankruptcy a petition of intervention, asking for payment in full or return of the property which was held by the bankrupt under conditional sale contract. When notice is received that a vendee under conditional contract of sale has been declared bankrupt, or where information arrives through any source, that creditors have filed an involuntary petition for adjudication in bankruptcy, the referee who will have jurisdiction should be communicated with at once. If a formal notice of first meeting of creditors is received, this notice will include the name and address of such referee. Where no other source is available, a letter requesting such information, directed to a bank in the town or city where the bankrupt resides will almost without exception receive prompt attention. When the name of the referee in bankruptcy having jurisdiction of the case in question shall have been received, he should be written at once to the effect that among the assets may be found the property covered by your conditional sale contract and a copy of the contract in question should be enclosed. (Form I.) The referee will usually reply promptly, acknowledging receipt of your favor and stating that the property in question will not be disposed of until the question of title has been determined.

Thereafter and at your earliest convenience, preferably before the first meeting of creditors, you should forward to the referee in question the original contract under which you claim, if same is in your possession, and if not, attention should be called to the fact that it is filed or recorded, and give the official title and place of residence of such filing or recording officer. Where notes have been taken covering deferred payments, the original unpaid notes should be sent to the referee.

At this time should be prepared the petition of intervention and to it should be attached a copy of the contract, also copies of all notes which have been given and remain unpaid. In case the original contract is filed or recorded and cannot be sent, then the copy attached to the petition should be certified by the recording officer in whose possession the original remains.

This petition may be drawn up in several different ways but a form which is brief and to the point is most desirable. It should, of course, describe the transaction which has taken place, giving the date and the amount of the contract in question and the balance unpaid thereon, and conclude with a request for delivery of the property or payment in full of the balance under the contract and notes. This paper should be sworn to, and where the petitioner is a corporation, the oath must be made by an officer, and must comply with the provisions of the particular state in which the verification is made. Where the petition is filed by an individual or a partnership, it must be sworn to by the individual or a member of the partnership, and such oath must conform to the laws of the state in which it is made. Accompanying the petition should be a form of order for convenience of the referee in granting the relief requested. (Convenient forms for the petitions of intervention, Forms II, III and the order in question, Form IV, follows).

By acting upon the suggestions made and using the forms as set forth, a creditor in bankruptcy holding a conditional contract of sale may file his own petition in any bankruptcy court in the United States, and can usually carry through the proceeding himself, and secure possession of his property or payment in full.

FORM I.

LETTER TO REFEREE.

Feb. 5, 1917.

Hon. Wm. H. Hotchkiss, Referee, Buffalo, N. Y.
In Re: Henry J. Barton, Buffalo, N. Y.

Dear Sir:

A notice for first meeting of creditors in this party's bankruptcy has been received. We desire to inform you he contracted on March 22, 1915, for a scale, such contract being one of conditional sale by which all title is retained in Buffalo Scale Company until full payment made. The amount of this contract was $250.00; he paid $40.00 cash, freight and cartage and gave notes for $210.00 referring to the contract. These notes are described as follows: Three for $35.00 each, due July, September and November 8, 1915, which have been paid; note $35.00 due January 8, 1916, note $35.00 due March 8, 1916, and note $35.00 due May 8, 1916, which have not been paid, making a balance of $105.00. Under the laws of your state we are either entitled to possession of the scale or payment of this balance, and we shall be pleased to file with you at an early date a petition of intervention asking for this relief. We enclose herewith a copy of the contract in question so that you may know its exact terms, and we ask you kindly do not allow the scale to be disposed of until the question of title is determined.

Yours truly,

Buffalo Scale Co.,

By T. L. R.

FORM II.

PETITION OF INTERVENTION.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

In the Matter of
Geo. H. Moore,
Bankrupt.

To Hon. K. K. Leggett, Referee:

The petition of Buffalo Scale Company of Buffalo, N. Y., same being a corporation duly organized under the laws of the State of New York, respectfully presents:

That prior to the adjudication of the above named bankrupt the said Buffalo Scale Company entered into a contract in writing with the said bankrupt of Stamford, Texas, such contract being dated February 10, 1915, whereby a certain scale was to be delivered to him upon the following terms, to wit:

It was agreed the sum of $75.00 should be paid for said scale; that title to scale should remain in Buffalo Scale Company until the amount as therein specified had been paid in full, as will appear by certified copy of said contract, which is hereto attached and made a part hereof, marked Exhibit "A." The contract in question was duly filed for record with the Clerk of County Court, Jones County, Texas, on February 25, 1915.

The scale in question was delivered to said bankrupt, who paid $25.00 cash but never gave the notes as provided for by the contract.

The scale in question has been scheduled by the bankrupt as a part of his stock and estate, and Buffalo Scale Company hereby assert they are the owners and entitled to possession

of the scale described in Exhibit "A" or payment of the balance unpaid under said contract.

WHEREFORE, Your petitioner prays that an order be made directing trustee of bankrupt's estate to pay $50.00 or deliver said scale to your petitioner and for such other, further or different relief as to the court seems just.

Buffalo Scale Company,

By Theodore L. Richmond,
President.

STATE OF NEW YORK, }
COUNTY OF ERIE. } *ss.*:

Theodore L. Richmond, being duly sworn, says he is the president of the Buffalo Scale Company, petitioner; that he has read the foregoing petition and knows the contents thereof and that same is true to his knowledge as to all matters therein alleged, except those stated to be alleged on information and belief and as to those matters he believes it to be true.

Theodore L. Richmond.

Subscribed and sworn to before me
this 12th day of July, 1917.

{ NOTARIAL SEAL. }

HENRY W. CARR,
Notary Public in and
for Erie Co., N. Y.

FORM III.

PETITION OF INTERVENTION.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

In the Matter of
John T. Hendricks,
Bankrupt.

To Hon. Ezra Brainard, Referee:

The petition of Buffalo Scale Company of Buffalo, N. Y., same being a corporation duly organized under the laws of the State of New York, respectfully represents:

That prior to the adjudication of the above named bankrupt the said Company entered into a contract in writing with the said bankrupt of Muskogee, Okla., such contract being dated August 19, 1915, whereby a certain scale was to be delivered to him upon the following terms, to-wit:

It was agreed the sum of $120.00 should be paid for said scale; that title to scale should remain in Buffalo Scale Company until the amount as therein specified had been paid in full, as will appear by certified copy of said contract which is hereto attached and made a part hereof, marked Exhibit "A". The contract in question was duly filed for record with the Register of Deeds, County of Muskogee, Okla., on September 9, 1915.

The scale in question was delivered to said bankrupt, who paid $20.00 cash and gave notes for $100.00, described as follows:

$20.00 due October 6, 1915.

$20.00 due December 6, 1915.

$20.00 due February 6, 1916.

$20.00 due April 6, 1916.

$20.00 due June 6, 1916.

Of these notes the one for $20.00 due October 6, 1915 and the one for $20.00 due December 6, 1915, have been paid, the other notes have not been paid and copies of said unpaid notes are hereto attached, marked Exhibits "B, C and D," respectively.

The scale in question has been scheduled by the bankrupt as a part of his stock and estate, and Buffalo Scale Company hereby assert they are the owners and entitled to possession of the scale described in Exhibit "A" or payment of the balance as represented by the contract and notes above described.

WHEREFORE your petitioner prays that an order be made directing trustee of bankrupt's estate to pay $60.00 or deliver said scale to your petitioner and for such other, further or different relief as to the court seems just.

Buffalo Scale Company,
By Theodore L. Richmond,
President.

STATE OF NEW YORK, COUNTY OF ERIE, } ss.:

Theodore L. Richmond, being duly sworn, says he is the president of the Buffalo Scale Company, petitioner; that he has read the foregoing petition and knows the contents thereof and that same is true to his knowledge as to all matters therein alleged, except those stated to be alleged on information and belief and as to those matters he believes it to be true.

Theodore L. Richmond.

Subscribed and sworn to before me this
12th day of July, 1917.

{ NOTARIAL SEAL }

HENRY W. CARR,
Notary Public in and
for Erie Co., N. Y.

FORM IV.

ORDER.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, SOUTHWESTERN DIVISION.

In the Matter of
Snyder Bros.,
Bankrupts.

At Valdosta, Ga., on the 20th day of November, 1917. Upon application of Buffalo Scale Company, by petition of intervention heretofore filed, asking for delivery of a certain scale or payment of $51.50, as represented by said contract.

It is ordered, that James Edward Means, trustee for said bankrupt's estate, pay to said Buffalo Scale Company the sum of fifty-one dollars and fifty cents ($51.50). (Deliver to said Buffalo Scale Company the scale in question.)

.....

Referee in Bankruptcy.

FIXTURES.

The question as to what rights a conditional sale vendor shall have where the property he sells becomes attached to real estate, has been widely litigated. Only a comparatively small number of states have a statutory regulation on this subject, (Massachusetts, New York, Oregon, Pennsylvania and Texas), but court decisions have varied the rule, from holding that the slightest attachment of such property constituted a fixture, to the other extreme presented, where a most substantial attachment was decided, not to constitute such property a part of real estate.

The more recent tendency has been to hold that property covered by a conditional sale agreement, which becomes attached to real estate, shall not be considered a fixture unless same becomes an actual or integral part of the real estate to which it is attached. An example would be that of a brick, a beam, or sand and cement that actually loses identity in the construction of such buildings. The United States Supreme Court has recently established this rule by two most important decisions. A synopsis of each is given below.

Not a Fixture.

A sprinkling system was installed in Virginia under a conditional sale contract, which provided that title thereto should remain in vendor until paid for, and that such personal property should not become a fixture even though attached to real estate. The system consisted of a 50,000 gallon tank upon a steel tower which was bolted to a concrete foundation, and pipes connected the tank with a sprinkler system in a mill lo-

cated near the tank. (Nothing said in the opinion about the sprinkler system in the mill itself, being pipes and valves attached to the building, as to whether or not that part of the plant had been furnished under the contract of conditional sale, along with the tank and tower). The conditional sale contract was not docketed as provided by the laws of Virginia.

While the system was being installed, the conditional sale vendee (the owner of the real estate upon which it was placed), executed a mortgage which covered the real estate where the system was being erected, and this mortgage contained an after acquired property clause. Such vendee and mortgagor later became bankrupt, with the conditional sale contract and the mortgage unpaid, and the question arose between the vendor of the sprinkling system, the mortgagee under the real estate mortgage, and the vendee's trustee in bankruptcy as to who had priority. The conditional sale contract had been executed prior to the amendment of 1910 to the bankruptcy law. Held the conditional sale vendor was entitled to remove its property, as it had not become an irremovable fixture upon the real estate, and this would also be true even though the real estate mortgage had been executed after the system had been installed and completed.

The opinion states substantially, that a conditional sale vendor who has taken security under such a contract before he parts with possession, is entitled to have such contract enforced, even though the personal property it covers may have been fastened to real estate, provided it shall not have become an integral part of such real estate, and even though the usefulness of such real estate is impaired by its removal, and even though such real estate may be incumbered by a mortgage taken in good faith for value and without notice of the conditional sale contract, either prior, or subsequent to such conditional sale contract. Holt v. Henley, 232 U. S. 637.

Tanks and fittings for a brewery in West Virginia were furnished under a conditional sale contract, retaining all title in vendor until paid for, and further providing that same might

be removed upon default. This contract was made on August 8th, 1908, and duly recorded in West Virginia on December 7th, 1908. Before the making of such contract the brewery company had mortgaged its land, brewery and all the buildings, machinery and appliances thereon, erected, or to be erected, and that mortgage had been recorded. Default was made upon the real estate mortgage, and a foreclosure was brought upon it; but the vendor of the tanks was not made a party.

A receiver was appointed for all the property including the tanks, and a day of sale set, when the vendor of such tanks sued out a bill in equity in the United States Court in West Virginia to restrain such sale, and asked for a return of its property. The chief points contended for in opposition to such bill were, that the tanks were absolutely essential to the working of the brewery, that same had become irremovable fixtures in the buildings, and could not be taken out, that the real property was covered by a mortgage when the tanks were placed upon it and they became subject to its lien.

It was shown that the tanks were firmly attached to the real estate, and that certain portions of the sides of the buildings must be removed in order to get them out. (The vendor offered to pay the expenses of repairing such walls after the tanks were out). The United States Supreme Court held, the vendor was entitled to possession of his property as against the mortgagee, and the rule was stated, that where a conditional sale vendor has made compliance with the laws of the state where the property is delivered; then no matter how essential it may be to the working whole of that building and its contents, and no matter how firmly attached it may be made to the building or to the real estate, still if it become not an essential part of the building, such as a brick or a beam, losing its identity, it may be removed by the vendor upon default. Detroit Steel Co. v. Sistersville Brewing Co., 233 U. S. 712.

REMEDIES.

Where a vendee under conditional sale contract defaults, it should be clearly understood by the vendor that he is not ordinarily confined to one of three remedies to wit:

First—An action for a money judgment upon the contract.

Second—An action for possession of the property.

Third—An action in conversion or trover for damages.

Such a contract carries a lien for securing the purchase price of the property covered by it, and in practically every state the vendor may bring an action in equity to foreclose such common law lien. Through such course the vendor avoids any necessity for repaying a portion of the purchase price, which may have been paid in by the vendee; or of advertising and selling the property at auction within a stated time, and of accounting for any balance over and above his debt, as in others.

Perhaps the most important advantages to be gained by such action, arise in those instances where the property has become attached to real estate in such a manner as to make it a fixture; the vendee is worthless, and material injury would be done to the real estate, or to the property covered by the contract or to both; if possession of such property were required by vendor upon default.

It has been almost uniformly held by the courts, in actions for actual physical possession under such circumstances, that same cannot be maintained; but by a proceeding to foreclose such lien the rights and equities of all parties concerned can be adjudicated. In most instances the property will be ordered sold to satisfy the balance of the purchase price, but in case

it shall have become so identified with other property (fixture on real estate) that it cannot be sold separately without great injury to itself, or to the other property, or to both; then the party so benefiting will usually be obliged to pay the balance on the contract, if that sum is less than the value of such property; or in case the value of the said property is less than the balance unpaid on the contract, then the value of such property will be the measure of damages. Gigray v. Mumper, 141 Ia. 396, 118 N. W. 393; Boynton v. Payrow, 67 Me. 587; Ross-Meehan etc. Co. v. Pascagoula Ice Co., 72 Miss. 608, 18 So. 364; Wolf & Co. v. Hermann etc. Bk., 168 Mo. App. 549, 153 S. W. 1094; Briggs v. Oliver, 68 N. Y. 336; Lembeck etc. Brewing Co. v. Sexton, 184 N. Y. 185, 77 N. E. 38; Crump v. Wissner, 163 A. D. 47, 148 N. Y. S. 401; Singer Sewing Machine Co. v. Leipzig et al, 113 N. Y. S. 916; Simpson Crawford Co. v. Knight, 130 N. Y. S. 236; Bloomingdale et al v. Braun, 80 Misc. 527, 141 N. Y. S. 590; Pease Piano Co. v. Fiske, 145 N. Y. S. 978; Quattrone v. Simon, 85 Misc. 357, 147 N. Y. S. 448; Hauss v. Savarese, 87 Misc. 330, 149 N. Y. S. 938; Wetherill v. Gallagher, 211 Pa. 306, 60 Atl. 905; Campbell Printing Press Co. v. Powell, 78 Tex. 53, 14 S. W. 245; In re: National Cash Register Co., 174 Fed. 579 (Ohio).

SUBSCRIBING WITNESS.

In connection with the subject of conditional sales and the proper perfecting of such contracts in the several states so that a vendor's rights may be protected, the question of having a subscribing witness, or witnesses, upon the instrument is important and seems not to be well understood.

A subscribing witness is never necessary on a conditional sale contract in states where no recording or filing is required. It is only in those states making provision for recording or filing of such contracts, that the witness question becomes important, and not in all of these. As a general rule no written contract of any nature can be recorded, as distinguished from being filed, with a county clerk, or register or other like officer, until it shall have been proven or acknowledged by the oath of some person. The object being to make such records authentic. It is many times not convenient to secure the personal acknowledgment of a conditional sale vendee upon his contract, and at least one state, South Carolina, does not provide for personal acknowledgment by a vendee, but recognizes only proof by witness.

It is therefore recommended that in Georgia, Missouri, New Jersey, North Carolina and Mississippi, one person should always sign the contract as a witness to the vendee's signature, and in Kentucky and South Carolina, two persons should sign as witnesses to the vendee's signature, either one of whom may later prove said signature by his oath.

In Florida there should always be two subscribing witnesses to the vendor's signature. In the State of North Dakota and

South Dakota the law is not definitely settled on the witness question; but as there is no provision for personal acknowledgment of conditional sale contracts in these states so that same may be filed, the safe and sure rule is to have two witnesses to the vendee's signature, after which there may be a proper filing and the vendor will be protected absolutely.

DEFINITIONS OF TERMS USED.

ACKNOWLEDGMENT — The act by which a party to an instrument avows before a notary public or other authorized officer that he executed the same. The term is also applied to the certificate of such officer that the party has so avowed his execution of the instrument. This certificate or acknowledgment is written on, or attached to the instrument, and is prima facie evidence of its due execution.

An instrument must usually be acknowledged before it will be admitted to public registry or record. Acknowledgment is also necessary to some instruments before they are legally effective.

ACTION — The prosecution of some demand or cause in a court of justice. A suit in a court.

AFFIDAVIT — A signed statement in writing, sworn to before an officer authorized to administer an oath.

AGENT OR ATTORNEY — A person authorized to act for another.

ASSIGNEE	One to whom some right in property is assigned or transferred.
ASSIGNMENT	A making over or transfer of personal property for a consideration.
ASSIGNOR	One who makes some transfer of property to an assignee.
ATTACHMENT	The legal process by which property is taken into the custody of the law, and held to satisfy any judgment which may be obtained later on against the owner of such property.
ATTESTED	Signed by one or more subscribing witness, or witnesses.
AUTHENTICATED COPY	One which has been compared with the original by a county clerk, or recorded, or other like officer, and is declared by him under his seal to be an exact copy.
BAILEE	The person who receives property under a bailment.
BAILMENT	The transfer of possession of personal property for a limited time, as in a loan, a pledge, a letting for hire, a deposit of property for storage. In bailment there is always the agreement, express or implied, that the property be returned when the purpose for which it was delivered has been fulfilled.

BAILOR	The person who delivers property under bailment.
BREACH OF CONTRACT	That act, or failure to act, by which the terms of a contract are violated or are not complied with.
CERTIFIED COPY	As used in this work the expression means a copy to which some person has made oath that it is a correct copy of the original.
CHATTEL MORTGAGE	A lien given upon personal property by the owner as security for the payment of a debt, or for the performance of some other obligation. Upon default such lien may be perfected into an absolute title by foreclosure and sale.
CITATION	As used in this work the word means the authority, either statute law or court decision, upon which the author relies as establishing the rule laid down on any subject.
CONDITIONAL CONTRACT OF SALE	The written instrument by which the agreements of a conditional sale are evidenced.
CONDITIONAL SALE	That form of contract by which, while the title and ownership of property rest in one person, called the vendor, it is agreed that upon the payment of a certain sum of money, or the performance of other certain specified acts by or on behalf of another person, called the vendee, the title and ownership of such property shall pass from the vendor to the vendee.

CONVERSION — The unauthorized assumption or exercise of acts of ownership over the personal property of another.

CRIME — As defined by New York law, a crime is an act or omission forbidden by law and punishable upon conviction by

(1) Death, or (2) imprisonment, or (3) fine, or (4) removal from office, or (5) disqualification to hold any office of trust, honor or profit under the state, or (6) other penal discipline.

Crime is either a felony or a misdemeanor. Felony is a crime which is or may be punishable by either death or imprisonment in a state prison. Misdemeanor is any other crime.

DECLARATION — As used in this work, means a formal statement, usually required to be in writing.

DEMURRER — An allegation in an action admitting the preceding pleading to be true, but insisting that the facts as set forth in said pleadings are insufficient in law to require an answer or constitute a cause of action.

DISCHARGE — As used in this work the word refers to the act, or instrument, by which the lien of a filed or recorded contract of conditional sale is relinquished, or surrendered, so that it is no longer an encumbrance upon the property.

EMBEZZLEMENT — The fraudulent appropriation of the property of another by one who is entrusted with its possession.

EXECUTED — As applied to an instrument means that the signing, or signing and acknowledgment has been completed.

EXECUTION — As used in this work, means the writ or authority by virtue of which the judgment of a court is enforced.

EXECUTORY — As used in this work, means not completed, unfinished.

FILING — As used in this work, refers to the act by which the original contract of conditional sale or a true copy, or a memorandum thereof, is placed in the custody of the filing officer. The names of the parties to such contract are indexed in a book, but the text or contents of such contract is not written out in any record book.

INNOCENT THIRD PARTY — As used in this work, the expression means a person who, paying a valuable and adequate consideration therefor, buys or takes a lien on property conditionally sold without knowledge sufficeint to put him on enquiry as to the true status of such property. So also "a bona fide purchaser for value."

INSTRUMENT — As used in this work the word means a written agreement, or any formal document.

INTERVENE	The act by which an interested person not already made a party thereto, asserts his right to be heard in a legal proceeding with others.
JUDGMENT	The final decision by a court of the matters at issue in a particular case.
JUDICIAL DETERMINATION	As used in this work, the expression means the decision of a court as expressed in a judgment.
LARCENY	The felonious taking and carrying away of the goods or property of another. When the property taken has a value equal to or more than a certain amount fixed by statute, and varying in the different states, it is known as grand larceny. When the value is less than this amount, the offense is known as petty larceny.
LEASE (Noun)	The agreement whereby the possession and use of property is transferred for a time for compensation.
LEASE (Verb)	To give another temporary possession and use of property for compensation.
LESSEE	The person who leases property from another.
LESSOR	The person who leases property to another.

LEVY	The taking or seizure of property under an execution to satisfy a judgment.
LIEN	A charge imposed upon specific property by which it is made security for the payment of a debt, or the performance of an act.
MAKES OATH	Swears to or affirms.
MISDEMEANOR	The common understanding of the term is a small or petty crime. (See Crime.)
MORTGAGE	(See Chattel Mortgage.)
MORTGAGEE	The person to whom a mortgage is given.
MORTGAGOR	The person giving or executing a mortgage.
NEGOTIABLE INSTRUMENT	An instrument to be negotiable must conform to the following requirements: 1. It must be in writing and signed by the maker or drawer. 2. Must contain an unconditional promise or order to pay a sum certain in money. 3. Must be payable on demand, or at a fixed or determinable future time. 4. Must be payable to order or bearer, and

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. Negotiable Instruments Law (§ 20) of the State of New York.

NEGOTIABLE PAPER — This term includes all those instruments which are transferable by indorsement or delivery, so as to vest in the transferee the legal title and enable him to maintain an action.

PLEDGE — A bailment or delivery of goods by a debtor to his creditor, to be kept until the debt is discharged, or until the pledgee is entitled to dispose of the property to satisfy the debt.

PLEDGEE — The party to whom delivery is made under the pledge.

PLEDGOR — The party making the delivery under a pledge.

PRIVILEGE — A right which the nature of a debt gives to a certain creditor entitling him to be preferred before other creditors.

PRIVILEGED DEBT — A debt, the nature of which gives it precedence in payment over other debts.

PROOF BY WITNESS — The verification of an instrument by a subscribing witness, who, before a notary public or other like officer, swears to the due execution of such instrument and to the fact that he

signed the same as a subscribing witness. Such proof in many states entitles the contract to be filed or recorded, as the case may be, without acknowledgment by the vendee in person.

PURCHASER FOR VALUE — (See Innocent Third Party.)

RECORDING — The act by which the proper officer receives into his custody any paper, or instrument entitled to be recorded, and does thereafter cause the text of such paper to be transcribed into the book or books kept in his office for that purpose. Recording also includes indexing the names of the parties for ready reference.

REDEMPTION, RIGHT OF — The privilege enjoyed under some circumstances by a party whose property has been sold, to redeem, or repurchase, same within an expressly limited time after such sale.

RELEASE — The act or writing by which some claim or interest is surrendered to another. (See Discharge.)

REPLEVIN — Is an action for the recovery of possession of personal property wrongfully taken or detained with or without the damages which the wrongful taking or detention has occasioned.

SATISFACTION — The payment or cancellation of a legal debt or demand.

STATUTE — A law passed by a legislative body.

SUBSCRIBING WITNESS — A person who, being present when a contract or instrument in writing is executed, signs his name as a witness thereto by permission or request.

TENDER — The offer of money in satisfaction of a debt, by producing and offering the amount to the creditor or party claiming, and stating verbally a willingness to pay.

THIRD PARTIES — As used in this work, the term includes all those persons, companies or corporations other than the parties to a conditional contract of sale, who become in any manner interested in the property sold under such contract, either by purchase of same from the vendee, or by accepting a mortgage or other like lien upon it, or in having the said property or the proceeds of same applied to payment of their debts.

TITLE — Signifies the means whereby a person's right to property is established. It is the foundation on which rests the ownership of property.

TRUSTEE IN BANKRUPTCY — A person chosen by the creditors with the approval of the bankruptcy court, whose duty it is to administer the estate of the bankrupt.

VALID	Legal or enforceable.
VENDEE	The purchaser or buyer.
VENDOR	The seller.
WAIVE	As used in this volume, to intentionally relinquish or abandon a known right.

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ERRATA

Page 134, Indiana, "can" in line three (3) paragraph "Fixtures," should read "cannot."

Page 224, Missouri, "cimcumstances" in line five (5) paragraph "Notes," should read "circumstances."

Page 512, "Bankruptcy," in lines 11 and 12 from bottom of page, "contions" should read "conditions."

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FOREIGN CORPORATIONS AND INTERSTATE COMMERCE.

A corporation organized under the laws of one State is a foreign Corporation as to every other State in the Union. The United States Constitution gives such a Corporation the right to do Interstate Commerce business without the payment of State fees or compliance with State laws. Nearly all Corporations are now doing business in more than one State, and it becomes of the utmost importance for them to know where Interstate Commerce ends and Domestic Commerce begins. They are being importuned by State taxing officials to make reports, pay fees, etc. Many Companies are complying which should not; others are not complying which should do so, in order to avoid the penalties imposed, chief of which is the making of their contracts VOID and NON-ENFORCEABLE.

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